

Jersey limited liability companies (LLC)

Insights - 14/02/2023

The purpose of this note is to provide a summary of the main legal requirements and general principles applicable to the formation, registration, operation and winding-up of a Jersey limited liability company (LLC).

This note is intended to provide a general summary of the position under Jersey law as at the date shown above; it is not to be taken as specific legal advice applicable to particular issues or circumstances. Anyone considering establishing an LLC should contact one of the Ogier partners listed in this briefing.

Introduction

The Limited Liability Companies (Jersey) Law 2018 (**LLC Law**), which came into force on 1 September 2022, creates a new hybrid entity, a Jersey limited liability company (**Jersey LLC**), similar to its Delaware and Cayman counterparts. Jersey partner James Fox was a member of the financial services industry working group which assisted with the introduction of the LLC into Jersey. A Jersey LLC is a corporate entity with limited liability of its members but one which has greater flexibility than a company around its management and organisation and which allocates profits and losses in a manner similar to a partnership. By default, a Jersey LLC will have separate legal personality but not be a "body corporate". However, unique to Jersey, a Jersey LLC may elect to be a "body corporate", which means it can choose to be treated as a partnership or a company for tax purposes. This election is only possible upon establishment and cannot be changed once made. This approach is designed to provide maximum flexibility in structuring options for an LLC.

As such, an LLC may be an appropriate vehicle for a range of uses in investment funds, joint venture companies, private equity transactions, securitisations and other corporate transactions and international structures.

Establishing an LLC

The formation of a Jersey LLC is straightforward and similar to the process of forming a Jersey

limited company or limited partnership. Only one member is required in order to register an LLC and there is no requirement for a manager.

Similar to the process for Jersey companies, an application (**LLC Application**) is made using the online *myRegistry* portal with the Jersey Registrar of Companies (the **Registrar**) with the following information to be provided:

- the name of the LLC, which may be a proposed name or a reserved name (such name must end with the words "Limited Liability Company" or the abbreviation "L.L.C." or "LLC" and must not, in the opinion of the Registrar, be misleading or otherwise undesirable);
- the nature of the LLC's business: chose from a predetermined list;
- details of the LLC's proposed registered office address that must be in Jersey;
- a signed registration statement (**Declaration**) containing the following information:
 - o the name of the LLC;
 - o the registered office of the LLC in Jersey;
 - o the name(s) and address(es) of each person who is to be a member and/or manager of the limited liability company upon registration; and
 - o the name(s) and the address(es) of the proposed secretary and deputy secretary (if any);
- details of the LLC's associated parties, being its beneficial owners and controllers as well as 'significant persons', who are the manager(s) of the LLC or, if there is no manager, the members involved in the management of the LLC;
- details of the activities of the LLC, particularly if the LLC is to engage in a "sensitive activity" under Jersey's 'Sound Business Practice Policy'; and
- payment of an application fee, depending on the proposed speed of registration

Similar to Jersey companies, we expect that a Jersey regulated corporate services provider would be responsible for preparing and submitting most LLC Applications.

Formation Certificate

On completion of the LLC Application, the Registrar will register the LLC and issue a certificate of formation (**Formation Certificate**). The Formation Certificate is conclusive evidence of compliance with all the requirements of the LLC Law in respect of formation and registration. An LLC is deemed to be registered on the date of the Formation Certificate.

The Formation Certificate will be issued by the Registrar from two hours up to five days after

filing the LLC Application depending on the level of the application fee. An out of hours registration is also available by agreement with the registrar.

Upon formation, the LLC should receive a consent to create limited liability company interests under the Control of Borrowing (Jersey) Order 1958. This is the same as a 'COBO consent' granted to Jersey companies in respect of shares.

Tax treatment

By default, an LLC will be treated in the same way as a partnership in Jersey and so will be tax transparent.

However, an LLC that elects to be a body corporate will be treated as a company for tax purposes. This is intended to cater for a U.S. "check the box" tax election where the LLC can be treated as either a company or partnership. We expect that the LLC will be treated in the same way as a Jersey partnership for UK tax purposes.

LLC Agreement

The LLC must have an LLC agreement (an **LLC Agreement**), which must be in writing. of the member or members of the LLC as to the business or affairs of the LLC. Although the LLC Agreement may be entered into at any time before, after or at the time of the filing of the LLC Agreement, if it is filed before the filing of such statement, it is deemed effective on the date of the Formation Certificate.

The LLC Agreement is not required to be filed with the Registrar but a copy of it together with all amendments must be kept at the LLC's registered office.

Pursuant to the LLC Law, the LLC Agreement may, among other things:

- provide for classes or groups of members having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members;
- make provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote;
- permit the taking of an action, including the amendment of the LLC Agreement, without the vote or approval of any member or class of LLC interest or group of members, including an action to create under the provisions of the LLC Agreement a class of LLC interest or group

of members that was not previously outstanding or existing;

- provide that any member or class of LLC interest or group of members shall have no voting rights;
- provide that all or certain identified members or a specified class of LLC interest or group of members have the right to vote separately or with all or any class of LLC interest or group of members or managers on any matter; and
- permit voting by members to be on a per capita, number, financial interest, class, group or any other basis

Unless otherwise provided in the LLC Agreement, written resolutions may be passed by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Therefore written members' resolutions do not need to be passed unanimously unless the LLC Agreement requires unanimous consent for written resolutions.

Membership

The initial member of the LLC is deemed admitted on the date of registration. The LLC Agreement should set out the conditions for admission as a subsequent member which will occur on satisfaction of such conditions and when the member is entered into the register of members of the LLC. In the absence of any such provision in the LLC Agreement, the consent of all existing members is required for admission of a subsequent member. Transfers of a member's interest in an LLC must be in compliance with the LLC Law and the provisions, if any, set out in the LLC Agreement. Provided all requirements for admission have been complied with or waived, a person is deemed to be a member and is subject to the terms of the LLC Agreement without the need of further action on his part.

Unless otherwise specified in the LLC Agreement, a member may be admitted and may receive an interest without making or being liable to make a contribution to the LLC.

A member may resign from the LLC and cease to be a member at the time or upon the happening of such an event and in accordance with the LLC Agreement or as otherwise specified in the LLC Act or with the consent of all of the members. Subject to the LLC Agreement, or unless all members otherwise consent, a person shall be treated as having resigned as a member of LLC immediately upon certain bankruptcy or insolvency states. The personal representative of a deceased or incapacitated member may exercise all of such member's rights in the LLC.

Limited Liability

Generally, unless specified to the contrary in the LLC Agreement, a member's liability to an LLC is

limited to the performance of any promise to contribute cash or property or to perform services. If a member does not make the required contribution of cash or services, the member, at the option of the LLC, may contribute cash equal to the agreed value of such contribution.

Where a member receives a distribution or is released from performing an obligation at a time when the LLC is unable to pay its debts as they fall due, for a period of six months after receiving such distribution or release from such obligation, such member shall be liable to the LLC for the amount of the distribution.

Subject to the LLC Agreement, members have no duties (fiduciary or otherwise) when exercising their rights or authorities or performing any of their obligations as members.

Allocations

Unless otherwise provided in the LLC Agreement:

- profits and losses shall be allocated based on the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned; and
- distributions of cash or other assets of a limited liability company shall be allocated on the basis of the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned

There are no capital maintenance requirements imposed on an LLC that limit the ability of the LLC to make distributions, only a cash-flow based solvency test.

Management

Unless otherwise provided in the LLC Agreement, the LLC Law provides that the members of the LLC, acting by a majority of votes, shall manage the LLC.

However, the LLC Law permits the members of the LLC to determine the internal governance and management arrangements of the LLC amongst themselves, subject to certain statutory provisions. Such arrangements will be set out in the LLC Agreement. Thus management of the LLC may be undertaken by one or more managing members acting by majority or by one or more appointed non-member managers.

Where a manager is appointed under the LLC Agreement, such manager shall have the rights, powers and duties imposed on such manager by the LLC Agreement whether party to the LLC Agreement or not.

The LLC Agreement may provide for classes or groups of managers with differing rights, powers and duties and may permit a manager to delegate its rights and powers to manage the LLC. The

LLC Agreement may specify the voting rights of the managers and the procedures to exercise such rights unless otherwise provided in the LLC Agreement.

Manager resolutions may be passed in writing if consented to by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted.

The LLC Law provides that, subject to anything in the LLC Agreement to the contrary, a manager does not owe any duty (fiduciary or otherwise) to the LLC or any of its members other than "to act in good faith in respect of the rights, authorities and obligations that are exercised or performed by the manager or to which the manager is subject in connection with the management of the limited liability company". This differs from the duties of a director of a Jersey company, which comprise statutory duties to act honestly and in good faith with a view to the best interests of the company; and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

There is therefore considerable flexibility to determine the scope of duties that will be owed by the manager to the LLC, subject to the minimum duty to act in good faith. Depending on the drafting of the LLC Agreement a manager may or may not have fiduciary duties akin to the directors of a Jersey company but will always have a minimum duty to act in good faith.

An act or omission of a manager that constitutes a breach of a duty to act in good faith may be authorised or ratified if all the members of the LLC authorise or ratify the act or omission; and after the act or omission, the LLC passes a cash flow insolvency test.

A manager may resign as a manager of an LLC at the time and as specified in the LLC Agreement or with the consent of the members. An LLC agreement may provide that a manager shall not have the right to resign as a manager. However, the resignation of manager in contravention of this would be valid under the LLC Law but the LLC may recover from the resigning manager damages for breach of the LLC Agreement and offset the damages against any amount otherwise distributable to the resigning manager.

Secretaries

From the date of registration, an LLC is required to appoint a person to act as a secretary of the LLC and may appoint a deputy secretary to carry out the secretary's function if, for any reason, the secretary is unable to carry out that function.

A secretary or deputy secretary must be an individual resident in Jersey or a company registered in Jersey that is registered to carry on trust company business under Jersey financial services legislation.

In practice, we expect that the vast majority of secretaries will be provided by corporate service

provides who will all also provide registered office and corporate administration services to the LLC.

Maintenance of records and accounts

An LLC must maintain at its registered office in Jersey:

- a register of members;
- a register of managers containing a list of the name and address of each manager;
- a register of secretaries, containing a list of the name and address of each deputy secretary and secretary;
- a copy of the Declaration;
- a copy of any other statement delivered to the registrar under the LLC Law;
- a copy of the Formation Certificate and any other certificate issued by the Registrar under the LLC Law;
- a copy of the LLC agreement and each amendment made to it;
- a statement of the amount of any contributions agreed to be made by each member and the time at which, or events on the happening of which, the contributions are to be made;
- a statement of the amount of money and nature and value of any other property or services contributed by each member and the dates that the contributions were made; and
- a statement of the amount of contributions returned to members and the dates that the contributions were returned

Each of the above documents may be available for inspection and copying without charge at the LLC's registered office, during the ordinary business hours of the LLC, at the request of a member or manager.

The Secretary is required to keep all the accounting records and returns of the LLC that are provided to the secretary by the LLC under the LLC Law for 10 years at a place in Jersey.

Register of Beneficial Owners, Controllers and Significant Persons

LLCs will be required to comply with the provisions of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 in the same way as other Jersey entities.

This includes a requirement to identify the LLC's beneficial owners and controllers and provide details of such persons to a central register operated by the Registrar. None of this information will be publicly available.

- A “beneficial owner” of an LLC means an individual who ultimately owns or controls the LLC, or the individual on whose behalf a transaction is being conducted by the LLC, including an individual who exercises ultimate effective control over the entity.
- A "controller" is any other individual exercising control over the LLC through other means. If no individual is identified as a controller, a person who exercises strategic decision-making powers, such as a manager will be a controller

In addition to details on beneficial owners and controllers, LLCs must provide details of their significant persons. For an LLC, this will include its managers, but if there is no manager, any members involved in the LLC's management. Unlike for Jersey companies, a secretary will not be a significant person for the purposes of the LLC.

Any changes to the details of beneficial owners, controllers or significant persons must be submitted to the Registrar within 21 days of the date of knowledge of such change.

Annual Confirmation Statement

An LLC shall, before the end of February in every year, file with the Registrar a return signed by or on behalf of the LLC certifying that it has, during the calendar year, complied with the provisions of the LLC Law and pay to the Registrar the prescribed annual fee. This will generally be done by the registered office service provider. Such annual confirmation statement will also include details of the LLC's significant persons.

Winding-Up

An LLC is wound up voluntarily when its term (as set out in the LLC Agreement) expires, or, on the occurrence of a specified event in the LLC Agreement.

Other ways in which a solvent LLC can be wound-up are analogous to provisions for Jersey companies:

- the Jersey Royal Court may order the winding up of an LLC if it is just and equitable to do so and is in the public interest. An application may be made by a manager of the LLC or a Jersey governmental entities (including the Registrar);
- an LLC may use the summary winding up procedure if its managers sign a solvency statement and its members approve the summary wind-up procedure. The assets and liabilities of the LLC (if any) are then realised and discharged before the winding-up procedure is complete; and
- an LLC may use the creditor's winding up procedure if its members so approve. Such procedure involves the appointment of a liquidator and the distribution of the LLC's assets to its creditors

An insolvent LLC may have its property declared "*en desastre*" upon an application to the Jersey Royal Court. This is analogous to a bankruptcy/insolvency declaration and the Royal Court may order the liquidation of the LLC in accordance with the *desastre* procedure.

Transfer by Way of Continuation and Mergers

An LLC may apply to continue out of Jersey and transfer by way of continuation to another jurisdiction.

The LLC Law also contemplates that an LLC may merge with other LLCs, as well as bodies incorporated inside or outside Jersey that are not limited liability companies.

There is however currently no proposal for a limited partnership or other type of entity to convert to an LLC.

Economic Substance

The Taxation (Companies – Economic Substance) (Jersey) Law 2019 (**Economic Substance Law**) requires in-scope entities that carry on particular activities (**Relevant Activities**) to have demonstrable economic substance in Jersey.

LLCs will be subject to the Economic Substance Law if they: (a) carry on Relevant Activities; (b) are tax resident in Jersey; and (c) generate gross income from such Relevant Activities.

As part of their Jersey annual tax return, LLCs will have to make various confirmations as to whether they have conducted any Relevant Activities in the preceding financial period and whether or not they have complied with the Economic Substance Law. LLCs that are carrying on a Relevant Activity and are tax resident in a jurisdiction outside Jersey or do not generate gross income are required to provide certain additional information, but are otherwise not required to demonstrate economic substance in Jersey. Relevant Activities are fund management business, banking business, insurance business, finance and leasing business, distribution and service centre business, headquarters business, intellectual property business, shipping, and holding company business. Relevant Entities are required to satisfy the economic substance test in relation to any Relevant Activity as set out in the Economic Substance Law.

For a more detailed description of the requirements of the Economic Substance Law, please see our client briefing on [Jersey Economic Substance Requirements](#).

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