

Cayman LLCs vs Delaware LLCs vs Jersey LLCs - Points of Distinction

Insights - 14/02/2023

The Limited Liability Companies (Jersey) Law 2018 (**Jersey LLC Law**) came into force on 01 September 2022, which created a new type of entity, a Jersey limited liability company (**Jersey LLC**). This follows a similar development in the Cayman Islands, where the Limited Liability Companies Act, 2016 (as amended) of the Cayman Islands (**Cayman LLC Act**) created the Cayman limited liability company (**Cayman LLC**). Both Jersey LLCs and Cayman LLCs share many similarities to their Delaware counterparts (**Delaware LLC**), and both have been set up principally to target the North American market where these concepts are familiar.

Accordingly, both the Jersey LLC Law and the Cayman LLC Act include many concepts and provisions from the Delaware Limited Liability Company Act (the **Delaware Act**), adapted to accommodate various principles of Jersey and Cayman Islands common law and existing legislation.

This memorandum highlights key points of distinction in the provisions of the Jersey LLC Law, the Cayman LLC Act and the Delaware Act. However, this memorandum does not purport to cover all of the differences between such laws and is not to be taken as specific legal advice applicable to particular issues or circumstances. In addition, it may not be relied on as advice as to Delaware law on which Ogier is not qualified to advise. Although this memorandum may refer in certain instances to the default position under the Jersey LLC Law or the Cayman LLC Act, each of such laws provides considerable flexibility to vary this default position in the respective LLC agreements.

Issue	Delaware	Cayman	Jersey
	Must include	Not required to	Must end with

Name	Must include "LLC", "L.L.C." or "Limited Liability Company" in its name.	Not required to include "LLC", "L.L.C." or "Limited Liability Company" in its name.	Must end with the words "Limited Liability Company" in full or either of the abbreviations "LLC" or "L.L.C."
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LLC agreement	No requirement to be in writing. LLC agreement may have an "as of" date which may be prior to registration.	Must be in writing. Cayman LLC Act provides that the LLC agreement shall only be effective on date of registration of the Cayman LLC, although parties may agree that the LLC agreement shall be deemed to take effect between themselves (but not against third parties) as at an earlier date.	Must be in writing. LLC agreement may have an "as of" date which may be prior to registration.
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Member management by majority	Default position: management by members acting by majority in interest.	Default position: management by members acting by majority in number.	Default position: management by members acting by majority in number of the total rights to the profits of the Jersey LLC but where that results in no
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members with a right to vote, the members may vote by a simple majority in number.

Duty of care/fiduciary duties

Duties (including fiduciary duties) may be expanded or restricted or eliminated by the LLC agreement; provided, that the LLC agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

Manager owes duty to act in good faith, which duty may be expanded or restricted by the LLC agreement but not eliminated. No fiduciary duties owed by members or committee members, absent anything in the LLC agreement. Cayman LLC Act states that member may exercise voting rights in its own best interests and as it sees fit even though it may not be in the best interests of the Cayman LLC or any other member.

Manager owes duty to act in good faith, which duty may be expanded or restricted by the LLC agreement but not eliminated. No fiduciary duties owed by members or committee members, absent anything in the LLC agreement. Any 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 members agree and the Jersey LLC will be able to discharge its liabilities as they fall due.

Statutory clawback of distributions

Clawback

Clawback

Clawback

applies where a member receives a distribution where (i) the Delaware LLC is insolvent on a balance sheet basis (liabilities exceed the fair value of the Delaware LLC's assets) and (ii) the member knew of such insolvency at the time of the distribution. Liability to clawback expires three years from the date of the distribution.

applies where a member receives a distribution or is released from an obligation where (i) the Cayman LLC is insolvent on a cash flow basis (unable to pay its debts as they fall due in the ordinary course of business) and (ii) the member has actual knowledge of such insolvency at the time of the distribution. No time limitation on clawback.

applies where a member receives a distribution or is released from an obligation where the Jersey LLC is insolvent on a cash flow basis (unable to pay its debts as they fall due). Limitation on clawback expires 6 months from the date of the distribution.

Definition of manager

Statutory definition of "manager" includes a person who is named as a manager of a Delaware LLC or designated as a manager of a Delaware LLC (although certain

Statutory definition of "manager" includes any member or other person in whom management of the Cayman LLC is vested.

Statutory definition of "manager" includes any manager appointed under the Jersey LLC Law or other person in whom management of the Jersey LLC is vested.

provisions of the Delaware LLC Law provide that the definition of a manager will be a person who "participates materially in the management of the limited liability company").

<p>Repurchase of LLC interest</p>	<p>A Delaware LLC may acquire, by purchase, redemption or otherwise, a member's LLC interest.</p>	<p>A Cayman LLC may acquire, by purchase, redemption or otherwise, a member's LLC interest, subject to a cashflow-based solvency test.</p>	<p>A Jersey LLC may acquire, by purchase, redemption or otherwise, a member's LLC interest, subject to a cashflow-based solvency test.</p>
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<p>Access to information</p>	<p>Members have the right, subject to reasonable standards in the LLC agreement, to obtain true and full information regarding the status of the business and financial</p>	<p>The right of a member to receive information regarding the status of the business and financial condition of the Cayman LLC is subject to any provision to the contrary in the LLC agreement.</p>	<p>The right of a member to receive information regarding the status of the business and financial condition of the Jersey LLC is subject to any provision to the contrary in the LLC agreement.</p>
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condition of the Delaware LLC. The manager has the right to information reasonably related to its position. The manager may keep confidential from the members information the disclosure of which it in good faith believes is not in the best interest of the Delaware LLC.

The information rights of members and managers may be restricted in the LLC agreement.

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Bankruptcy etc of member

Unless otherwise provided in the LLC agreement, a member automatically ceases to be a member on the death, bankruptcy or insolvency of such member.

Unless otherwise provided in the LLC agreement, a member does not automatically cease to be a member on the death, bankruptcy or insolvency of such member.

On the death or incapacity of a member, such member's personal

Unless otherwise provided in the LLC agreement, a member automatically ceases to be a member on the bankruptcy or insolvency of such member.

On the death or incapacity of a member, such member's personal representative may exercise

representative may exercise that member's rights in the Cayman LLC.

that member's rights in the Jersey LLC.

Dissolution of LLC

In accordance with the Delaware Act.

The Cayman LLC Act provides for voluntary winding up, compulsory winding up or winding up under the supervision of the court. The provisions of the Cayman Companies Law are imported into the Cayman LLC Act. It is also possible for a Cayman LLC to be struck off the register as an alternative to formal winding up, subject to reinstatement during the subsequent 10 year period. Non-petition clauses are given statutory recognition.

Regulations issued pursuant to the Jersey LLC Law provide for winding up at the end of a fixed period, summary winding up, creditors' winding up or winding up under the supervision of the court on just and equitable grounds. Reinstatement of a cancelled Jersey LLC is possible up to 10 years after cancellation.

Dual registration

Statutory procedure for a non-US

No ability for a Cayman LLC to be registered in

No ability for a Jersey LLC to be registered in

entity to be registered and exist under its original jurisdiction and under Delaware law at the same time.

the Cayman Islands and in another jurisdiction at the same time although an LLC may be transferred by way of continuation to or from another jurisdiction or converted from an exempted company.

Jersey and in another jurisdiction at the same time. There are plans to issue regulations (not yet issued) under which the Jersey LLC may be transferred by way of continuation to or from another jurisdiction.

Series LLCs

An LLC agreement may establish one or more series of members, managers, limited liability company interests or assets. The Delaware Act provides for the debts and obligations of one series to be enforceable against the assets of such series only, and not against the assets of the

No series LLC provisions. The LLC agreement may provide for different classes of LLC interests or groups of members, and profits and losses may be allocated among such classes or groups as the LLC agreement provides, but there is no statutory segregation.

Currently, Jersey LLCs are not permitted to issue series. However, the Jersey regulator has stated that this position may be subject to change once the implications for the Jersey registry are assessed.

assets of the Delaware LLC generally or any other series, and contains additional detailed provisions regarding the management, operation and segregation of separate series.

Tax Undertaking

No similar provision in Delaware.

A Cayman LLC may apply for a tax undertaking certificate from the Cayman Islands Government which provides that no law which is enacted in the Cayman Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to the Cayman LLC or to any member thereof in respect of the operations or assets of that Cayman LLC or

No similar provision in Jersey.

membership interest of any member therein for a period of 50 years from the date of the undertaking.

Registered Agent

Required to have a registered agent for service of process.

Required to maintain a registered office in the Cayman Islands for service of process. No requirement for separate registered agent.

Required to maintain a registered office in Jersey. A Jersey LLC must appoint a secretary that is registered in Jersey and regulated under Jersey financial services legislation.

Statutory registers

Required to maintain:

- Register of members
- Register of managers
- Register of mortgages and charges (over the LLC's assets)
- Register of security interests (granted by members over their LLC

Required to maintain:

- Register of members
- Register of managers
- Register of secretaries
- Record of contributions and return of contributions

interests)

- Record of contributions and return of contributions

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