



Bermuda Limited Liability Companies (LLCs)

By Stephanie Paiva Sanderson, Corporate Attorney

The Limited Liability Company Act came into force on 1 October, 2016 and the limited liability company (**LLC**) vehicle is now available for the first time ever in Bermuda.

The introduction of the LLC is significant for Bermuda not least because it is a novel form of commercial vehicle for the jurisdiction. Given the substantial amount of US business and investment in Bermuda it made good commercial sense for Bermuda to introduce the LLC which was a direct result of requests from US stakeholders for such a vehicle. The Bermuda LLC legislation is modelled carefully on Delaware legislation and is more closely aligned with Delaware law than similar legislation in other offshore jurisdictions. This will assist with providing a body of jurisprudence to support the new legislation in Bermuda.

The LLC is a hybrid entity which merges characteristics of both a partnership and a company limited by shares. Under the new Bermuda LLC regime, parties are able to agree the operational and management terms applicable to it allowing for great flexibility and customisation (as with partnerships) whilst enjoying separate legal personality and limited liability of its members.

It is a very flexible vehicle which provides a noteworthy alternative structuring option to complement the existing choice of vehicles in Bermuda. The LLC is a useful business vehicle which has potential applications in a variety of areas including investment funds, asset holding, special purpose vehicles, joint ventures, general corporate transactions, venture capital and private equity structures. It will be particularly appealing to hedge fund managers and clients with structures that already or typically use Delaware LLCs. However, beyond utilisation of Bermuda LLCs in existing structures or within new structures, they may also be used as standalone vehicles (for asset holding purposes, for example).

Some key concepts of the Bermuda LLC regime include:

- Any one or more persons may form a limited liability company for any lawful business, purpose or activity.
- The LLC will be a separate legal entity and, subject to the LLC agreement, will have the capacity, rights, powers and privileges of a natural person.
- The LLC will not be dissolved by reason only that the limited liability company has no members.
- LLC agreements will be given the maximum effect of the principle of freedom of contract and enforceability.
- The management of an LLC is vested in its members or, if the LLC agreement provides, a manager chosen in the manner provided in the LLC agreement.

BeesMont Law Limited

5th Floor Andrew's Place, 51 Church St., Hamilton HM 12, Bermuda
T +1 441 400 4747 F +1 441 236 1999 W beesmont.bm



- To the extent that a person has duties (including fiduciary duties) to an LLC or to another member or manager or to another person that is a party to or is otherwise bound by an LLC agreement, that person's duties may be expanded or restricted or eliminated by provisions in the LLC agreement (except that no such provisions shall permit fraud or dishonesty).
- Registration of the LLC is straightforward and involves the filing of a certificate of formation with the Bermuda Registrar of Companies.
- There is great flexibility to agree the operational aspects of the LLC in the LLC agreement which deals with the affairs of the LLC and the conduct of its business.
- An LLC can convert into a company or an exempted limited partnership and vice versa.
- An LLC may merge or amalgamate with any foreign entity and continue as an LLC or as a foreign entity.

One of the most attractive aspects of the LLC is the ability for the parties to create a bespoke vehicle with a customised LLC agreement which can deal with elements of the structure such as, *inter alia*, voting and consent rights, allocations and distributions, duties to the LLC or other parties, and appointment, admission or removal of managers or members.

The new LLC regime offers Bermuda's financial services clients additional choice and flexibility as Bermuda continues to evolve and adapt to market requirements.

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