

KEY FACTS

LIMITED LIABILITY COMPANIES

THE LIMITED LIABILITY COMPANIES (JERSEY) LAW HAS RECENTLY COME INTO FORCE, INTRODUCING THE ABILITY TO CREATE A NEW FORM OF LIMITED LIABILITY COMPANY (LLC) OR JERSEY LLC.

As well as providing a further addition to Jersey's comprehensive tool kit of wealth management and capital structuring vehicles, the Jersey LLC may 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 by default; however, may elect to be a "body corporate" on incorporation
- > 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 each 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, managers (akin to directors of a company) may be appointed, or by default a member(s) will provide the management of the LLC (akin to partners in a partnership)
- > May be formed with a sole member
- > Members may also be appointed as managers
- > Neither a member nor a manager need be Jersey resident
- > Must appoint a Jersey resident secretary, typically a Jersey-based corporate services provider licensed by the JFSC, such as Trident
- > Corporate entities may be utilised for the various LLC roles but they must 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 is managed by its member(s), each with an LLC interest. Such interests include an interest in the LLC's profits, losses, rights to distributions and other rights or obligations as specified in the LLC agreement.

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 may be attractive to US-based service providers and intermediaries is the intention to bring the duties of LLC members into line with other jurisdictions, such as Delaware and Cayman.

A manager does 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

The key duties of the secretary include record-keeping requirements such as those in relation to accounts and the completion of statutory filings.

BENEFICIAL OWNERSHIP

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

GROUP OR UMBRELLA STRUCTURES AND SEGREGATION OF ASSETS

It is understood that the Jersey LLC provides 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

Jersey LLCs are designed to be a transparent entity for tax purposes and analogous to the US LLC and its check-the-box regime. By default, an LLC will be treated in the same way as a partnership for Jersey tax purposes. However, an LLC that elects to be a body corporate will be treated as a company for tax purposes, but this will depend 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 expected 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, this latest Jersey product offering aims to reinforce the jurisdiction's reputation as the "go to" financial services centre for the provision of funds and corporate services.

FIND OUT MORE

If you would like to discuss any aspects of the above in more detail, please contact your usual Trident representative or email Trident Jersey directly at jersey@tridenttrust.com.

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