

## BERMUDA INTRODUCES LLC AS NEW LEGAL VEHICLE

by Jennifer Eve

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The Limited Liability Company (**LLC**) is the first new legal vehicle to be introduced into Bermuda in many years. The LLC was introduced by the Limited Liability Company Act 2016 (**LLC Act**), which was passed in the Senate in July 2016 and became operative on 1 October 2016.

The new legislation provides an additional option for those structuring investment funds, private equity vehicles and investment holding vehicles. As it is modelled on the Delaware LLC, it will be familiar to those that do business with the United States.

This commonality with the Delaware LLC is one of the many benefits of using an LLC to structure investment vehicles. The LLC allows greater consistency between onshore/offshore structures and will potentially reduce implementation costs when using documentation employed by onshore vehicles. American managers using a Delaware LLC onshore now have the option of forming a Bermuda LLC offshore.

The LLC is a hybrid legal vehicle that has many of the features of a partnership with separate legal personality - but within a corporate entity. The LLC also has much of the flexibility of a partnership and the terms of the LLC agreement -- including operations, management and allocations of profits -- can be made bespoke.

Like a company limited by shares and a limited partnership, the liability of an LLC's member is limited.

Bermuda exempted companies have separate legal personality but must maintain a share capital while an exempted limited partnership has greater contractual flexibility in relation to capital accounting provisions. The members of an LLC have an interest in a capital account like a partnership.

An exempted limited partnership is managed and controlled by a separate general partner. A Bermuda LLC may be managed by one or more members (a “managing member”) or a manager may be appointed who may or may not be entitled to share in the profits of the LLC. Managing members would manage the LLC in a similar way to a general partner of a limited partnership but without unlimited liability for such members in respect of the LLC’s losses.

The following are additional salient features of an LLC:

- An LLC’s separate legal personality continues until the LLC is dissolved. The LLC is not dissolved by reason only that the LLC has no members.
- An LLC is governed by an operating agreement (**LLC Agreement**), which must be governed by Bermuda law but otherwise allows for maximum contractual flexibility among the members, particularly with respect to the allocation of profits, losses and distributions among its members. LLC interests can be denominated in any currency that the LLC chooses. The LLC Agreement can also provide for the voting and consent rights of different classes or groups of members.
- Subject to the LLC Agreement, an LLC has the capacity, rights, powers and privileges of a natural person.
- A person’s duties (including fiduciary duties) to the LLC or to another member or manager or other person party to or bound by the LLC Agreement may be expanded, restricted or eliminated by the LLC Agreement (except no such provision shall permit fraud or dishonesty).
- Any one or more persons may form an LLC for any lawful business, purpose or activity.
- The management of an LLC is vested in its members or a manager chosen in the manner provided in the LLC Agreement.
- The LLC Act provides that an LLC may be amalgamated or merged with a foreign entity and either continued as an exempted LLC or as a foreign entity.
- In addition, an LLC may continue into Bermuda from a foreign jurisdiction and vice versa.
- The LLC Act provides that an LLC may convert to a company and vice versa.
- The LLC Act provides for the conversion of an exempted LLC to an exempted limited partnership and vice versa.
- The process of forming an LLC is simple and requires the filing of a certificate of formation with the Registrar of Companies and payment of the appropriate fee. The Registrar maintains a register of LLCs in Bermuda.

We expect that the flexibility of the Bermuda LLC will prove to be a popular option for clients involved in the structuring of investment funds, private equity vehicles and investment holding vehicles.

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