

Introducing the Bermuda LLC

By Sally Penrose

The Limited Liability Company Act 2016 (LLC Act) came into force on 1 October 2016 and introduced into Bermuda its first new corporate structure in 100 years. Appleby is pleased to have been able to work closely with the legislature to ensure that Bermuda's existing funds law is simultaneously amended so that LLCs are available immediately for use in investment fund structures. Appleby are ideally placed to advise with respect to LLCs.

What is an LLC?

A limited liability company or "LLC" is a hybrid legal structure allowing the contractual and operational flexibility of a partnership to be housed within a corporate entity. Like a Bermuda exempted company, an LLC has separate legal personality and the liability of its members is limited. Whilst members of a Bermuda company receive shares, members of a Bermuda LLC will each have an interest in a capital account in a similar way to partners in a partnership.

Under the Bermuda LLC Act parties can create bespoke vehicles having the contractual freedom to set out in the LLC agreement the terms of operation and management of the LLC as well as expressly agreeing the allocation of profits and timing of distributions amongst its members. 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.

Key features of an LLC

- An LLC is a separate legal entity, the existence of which as a separate legal entity will continue until the LLC is dissolved.
- An LLC is governed by an operating agreement (LLC Agreement), which



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must be governed by Bermuda law but otherwise allows for maximum contractual flexibility amongst the members, particularly with respect to the allocation of profits, losses and distributions amongst its members. LLC interests can be denominated in any currency with 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.
- Any one or more persons may form an LLC for any lawful business, purpose or activity.

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 will maintain a register of LLCs in Bermuda.

Structural flexibility of LLCs

A Bermuda LLC is an attractive structuring option for operators of investment funds and in particular closed ended private equity funds as the flexible corporate governance structure allows "managing members" to manage the fund (in a similar way to a general partner) but without unlimited liability for such members in respect of the fund's losses. LLCs are flexible when it comes to structuring the economics of the fund as well as capital call and default mechanisms.

The Bermuda LLC Act is modelled on the Delaware legislation and includes similar concepts to those found in the Delaware Act. Such similarities will allow for structural and administrative efficiencies when creating and managing onshore and offshore investment fund vehicles, allowing for principal legal documents of the onshore and offshore feeders to be harmonised. ■