



Limited Liability Company Act 2016 passed in Bermuda Senate

The Limited Liability Company Act 2016 (**LLC Act**) has today passed in the Senate and is set to come into force in the near future. The LLC Act introduces into Bermuda the first new corporate structure in 100 years.

Although new in Bermuda, LLCs are of course well known to those located in, or who do business with, the United States of America. In particular, Bermuda's legislation has been modelled on the Delaware LLC and consequently it will provide a welcome degree of familiarity to clients and their advisers.

Although the LLC vehicle may be utilised by clients in a broad range of sectors, the LLC has undoubtedly been of great interest to clients in the investment management/funds sector.

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 is ideally placed to advise with respect to LLCs.

What is an LLC?

A limited liability company (**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 on 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, and the LLC will not be 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 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 which 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 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.
- 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 LLC or as a foreign entity.
- In addition, an LLC may continue into Bermuda from a foreign jurisdiction and vice versa.
- The LLC Act also 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.

Key Features of an LLC

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. We believe that the commonality with Delaware legislation will prove to be one of the many benefits of using a Bermuda LLC when structuring investment vehicles thereby allowing for greater consistency across the constitutional documents in a master/feeder structure and potentially reducing implementation costs, especially where the documentation for any onshore vehicle is substantially in place. 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.

Clients who work within family offices may also be interested in working with LLCs as they offer flexibility in structuring arrangements where there may be a number of family members but where a partnership or trust structure is unattractive for other reasons

If you have any questions or require further information, please contact us.

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