

LIMITED LIABILITY COMPANIES

Jersey legislation allows limited liability companies to be established pursuant to the Limited Liability Companies (Jersey) Law 2018, as amended (**LLC Law**). Often described as a "hybrid" between a company and partnership, an LLC offers its members limited liability combined with the flexibility of being able to draft an LLC agreement to set the terms of their relationship. In Jersey, LLCs can cover a diverse range of roles, from group holding companies and joint venture companies, to securitisation vehicles and carry vehicles in fund structures.

LLCs are hugely popular in the United States and have spread to a number of other international finance jurisdictions. As the Jersey LLC Law is primarily designed with the U.S. market in mind, it was based mainly on the equivalent Delaware statute. Key points of interest to our clients are set out below.¹

Issue	Delaware	Jersey
Name	Must include: <ul style="list-style-type: none"> • "LLC" • "L.L.C." or • "Limited Liability Company" in its name.	Must include: <ul style="list-style-type: none"> • "LLC" • "L.L.C." or • "Limited Liability Company" in its name.
LLC agreement	Need not be in writing. LLC agreement may have "as of" date which may be prior to registration.	An LLC agreement shall be entered into (if not already existing) before, after or at the time of delivery of the declaration to the Registrar (the declaration being the application for registration). May be made effective 'as of' the date of the certificate of formation or at such other date as specified in the LLC agreement.

¹ Please note that Appleby does not practice the law of Delaware. The information in the 'Delaware' column was obtained from reliable public sources but does not represent Appleby legal advice.

Publicly available information	The Certificate of Formation is the only public record of a Delaware LLC, showing the LLC name and the name and address of the Registered Agent, the date of filing and the company file number	<p>The Certificate of Formation and the Declaration (and any amendments to the Declaration) are the only public records of a Jersey LLC (save where a Jersey LLC has issued a prospectus). The Declaration will include the name and address of the LLC, names and addresses of each member, manager, secretary and company secretary. The Certificate of Formation shall show the registration number of the LLC and the date it is issued. Any manager, or member involved in the management of the LLC, will also have some other limited information recorded publicly as "significant persons" of the LLC.</p> <p>The LLC agreement will not be a matter of public record so members (and managers) can regulate their affairs privately.</p>
Member management by majority	Unless otherwise stated in the LLC agreement, management is by members acting by majority in interest.	Unless otherwise stated in the LLC agreement or except as provided by the LLC Law, management is by members acting by majority of the total rights to the profits of the LLC.
Duties	<p>Duty of care and fiduciary duties may be expanded or restricted or eliminated by the LLC agreement.</p> <p>LLC agreement may not eliminate the covenant of "good faith and fair dealing".</p>	Subject to the LLC agreement, a manager does not owe any duty (fiduciary or otherwise) to the LLC or any member or other person other than a duty to act in good faith in respect of the rights, authorities and obligations that are exercised or performed or to which such manager is subject in connection with the management of the LLC. Subject to the LLC agreement, any act or omission of a manager that constitutes a breach of a duty to act in good faith may be authorised or ratified if all the members agree and, after the act or omission,

		the LLC will still be able to discharge its liabilities as they fall due.
Clawback	<p>Clawback of a distribution available where:</p> <p>(i) the LLC is insolvent on a balance sheet basis (liabilities exceed the fair value of the LLC's assets); and</p> <p>(ii) the member knew of such insolvency at the time of the distribution.</p> <p>Liability to clawback expires three years from the date of the distribution.</p>	<p>Clawback of a distribution available where at the time when and immediately after payment is made, the limited liability company is insolvent (meaning the LLC is unable to pay its debts as they fall due).</p> <p>Liability to clawback expires 6 months after the date of receipt by a member of a distribution except in the case of fraud.</p>
Definition of manager	"Manager" includes a person who is named or designated as a manager. For certain purposes specified in the Act, a manager may also be anyone who "participates materially in the management of the limited liability company".	A "manager" is one who is appointed as such in the LLC agreement, and the management of the LLC shall vest in that manager to the extent provided in the LLC agreement (and such manager has been appointed).
Repurchase of interest	An LLC may purchase or redeem a member's LLC interest.	Subject to the LLC agreement, an LLC may acquire, by purchase, redemption or otherwise, any LLC interest or other interest of a member or manager in the LLC if immediately following the acquisition, the LLC does not become insolvent.
Access to information	Members have the right, subject to reasonable standards in the LLC agreement, to obtain true and full information regarding the status of the business and financial condition of the LLC. The manager has the right to information reasonably related to its position. The manager may keep confidential from the	An LLC must have a registered office in Jersey at which the LLC's formation documents, list of members and managers, LLC agreement and related documents must be kept. Members and managers have access to this information. Information relating to commitments, contributions made and contributions returned must also be kept at the registered office. The LLC agreement may restrict member access to these particulars as

	members information the disclosure of which it in good faith believes is not in the best interest of the LLC.	<p>they relate to other persons. The LLC agreement may also restrict the disclosure of information which is believed in good faith not to be in the best interests of the LLC or could damage the LLC or its business, or which the LLC is required by any other enactment or by agreement to keep confidential.</p> <p>Certain information regarding the beneficial ownership of the LLC must be provided to the JFSC who may share this with other regulators.</p>
Bankruptcy (etc.) of member	Unless otherwise provided in the LLC agreement, a member automatically ceases to be a member on the death, bankruptcy or insolvency of such member.	Subject to the LLC agreement, any member shall be treated as having resigned as a member of the LLC upon insolvency, bankruptcy or similar proceedings. Subject to the LLC agreement, a member is liable to an LLC to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason.
Merger and re-domiciliation of LLC	Available in accordance with general Delaware law.	Available in accordance with the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022.
Dissolution of LLC	In accordance with the Delaware Act.	LLC may be summarily wound up by its managers or members or have a liquidator appointed in accordance with regulations.
Series LLCs	An LLC agreement may establish one or more series of members, managers, limited liability company interests or assets. The Delaware Act provides for the debts and obligations of one series to be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series, and contains additional detailed	Under provisions yet to come into force, subject to the LLC agreement, an LLC may create one or more designated series consisting of members, managers, LLC interests or assets, each of which shall have legal personality separate from that of its members, the LLC and any other series thereof but shall not be a body corporate. A series may have separate rights, powers

	provisions regarding the management, operation and segregation of separate series.	or duties with respect to specified property or liabilities of the LLC or profits and losses associated with specified property or liabilities, and any such series may have a separate business purpose or investment objective.
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