



Bermuda LLCs: A New Entity in a Familiar Form



Bermuda's recently enacted *Limited Liability Company Act, 2016* (the "Bermuda LLC Act") comes into force on 1 October 2016. The legislation provides for the formation and operation of limited liability companies ("Bermuda LLCs") which will be familiar to those with experience of Delaware LLCs.

The Bermuda LLC Act provides for a new form of entity which can be used for any lawful business or activity, including trading, asset holding, financing and investment.

What is a Bermuda LLC?

A Bermuda LLC is a hybrid entity combining characteristics of a limited partnership and a company limited by shares (referred to here as a corporation). The LLC concept was first developed in the United States, where it has become one of the most common forms of business entity, due to its flexibility and ease of operation. The central provisions of the Bermuda LLC Act were closely modeled on the corresponding provisions of the Delaware LLC legislation, so that Bermuda LLCs will look, feel and operate much like Delaware LLCs.

Like a corporation, a Bermuda LLC is a separate legal entity, and its members have limited liability; however, like a partnership, the affairs of a Bermuda LLC are governed by an agreement, rather than by statutorily mandated constitutional documents. This provides great flexibility, as the Bermuda LLC Act, like its Delaware counterpart, expressly provides that it is to be construed to give maximum effect to the principle of freedom of contract in relation to LLC agreements – allowing the LLC agreement to fully reflect the parties' intentions and eliminate many of the formal constraints applicable to corporations.

Advantages of Bermuda LLCs

Operational characteristics

Unlike corporations and limited partnerships, Bermuda LLCs are not required to have a separation of ownership and management and can be managed by their members, so there is no need for a board of directors or a general partner. Alternatively one or more non-member managers can be appointed if that is what the parties desire.

The LLC agreement can provide great flexibility in providing how the relationship between the members will be structured, including rules for voting and governance and the basis for distributions and for allocating profits and losses. Similar flexibility exists in relation to the members' or managers' duties to the Bermuda LLC or to each other, as any such duties that would otherwise exist at law or in equity may be expanded, restricted or even eliminated by the LLC agreement (except that fraud and dishonesty cannot be permitted). Bermuda LLCs



also have a broad power to indemnify members and managers (except in respect of their fraud or dishonesty). The Bermuda LLC Act expressly permits members and managers to vote in their own self-interest.

Security interests

Any security interest on the assets of a Bermuda LLC can be registered in Bermuda, and such registration will ensure priority under Bermuda law over any unregistered and any subsequently registered security interests. This provides important certainty to lenders.

Fundamental changes

Bermuda LLCs are able to: (i) merge or amalgamate with other Bermuda LLCs; (ii) merge or amalgamate with foreign entities; (iii) discontinue from Bermuda and continue in another jurisdiction; (iv) convert to Bermuda limited partnerships with separate legal personality and (v) convert to Bermuda corporations. In addition, such limited partnerships and corporations can convert to Bermuda LLCs, and foreign LLCs can move to Bermuda by continuing as Bermuda LLCs.

Summary

The Bermuda LLC is a flexible commercial vehicle designed to enable parties to more easily reflect their commercial agreement in the entity's constitution. It is also intended to allow for simpler and more efficient operation. All of this is achieved by providing primacy to the principle of freedom of contract.

Drawing closely on the corresponding legislation in Delaware, the Bermuda LLC Act provides such an entity in a form that will already be familiar to many. Although Bermuda's legislation is new, it comes with the provenance of a tried and tested model, a great example of practical innovation.



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