

Coming to America: Jersey introduces US-style LLCs

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Summary

Jersey has enacted the Limited Liability Companies (Jersey) Law 2018 which permits the formation of US-style “limited liability companies” (or “LLCs”) in Jersey (the “LLC Law”).

Carey Olsen is pleased to have supported government in the development of the LLC Law, which demonstrates Jersey’s continuing status as a leading international financial centre, and has been prepared following initial discussions with various stakeholders including Jersey Finance. It also follows the recent introduction of LLCs to both the Cayman Islands and Bermuda.

What is an LLC?

As outlined by the government consultation that led to the introduction of the LLC Law, the LLC is an entity historically based on mainland-European equivalents (GmbH and S.à r.l), and its popularity has meant that LLC formations now account for over two-thirds of all transparent vehicle choices in the US each year.

A comparison of the main characteristics of the Jersey LLC with other Jersey vehicles is provided in table form at the end of this article.

Why are LLCs so popular in the US?

LLCs combine the limited liability protection and separate legal personality of a company with the constitutional flexibility and privacy of a partnership, whilst also enabling a choice between the management structures and (in the US) the tax treatments of both. Whilst the Jersey LLC is to be tax transparent for Jersey tax purposes, it is envisaged that the usual election options will be available in the US.

LLCs can therefore vary greatly in form depending on the purpose for which they are created and it is that flexibility that helps make them attractive. As such, they are used for a variety of purposes, from simple businesses undertaken by one or more persons to being the ultimate holding vehicle of large public company structures. They are also popular as special purpose vehicles in many finance and fund structures including, for example, as carried interest or feeder vehicles.

Why does Jersey not already have them?

The available Jersey vehicles tend to mirror those available in England and Wales, where the legislative response to the demand for something akin to LLCs (i.e. separate legal personality to hold assets in its own name but treated as transparent for tax purposes) was the creation of LLPs. Jersey has, to date, mirrored this approach. Use of the LLP is therefore expected to continue where it is familiar however the introduction of LLCs is intended to help cater to our US clients: North American assets and funds administered in Jersey totalled around £169bn in 2016.

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If Jersey has LLPs (being the jurisdictional equivalent of LLCs) why introduce LLCs?

Whilst LLPs can be considered a jurisdictional equivalent of LLCs, LLP legislation was brought more into line with existing partnership law in order to achieve tax transparency in the UK. As a result, LLPs are generally more restrictive than LLCs. It is also anticipated that Jersey LLCs will eventually have the ability to create “series” within themselves, akin to a protected cell company creating cells. The LLC can therefore be a much more flexible vehicle, although the LLC agreement can, of course, be made more restrictive.

Furthermore, as the introduction of LLCs is predominantly aimed at assisting US investment, the appeal of having a vehicle (and it using terminology) that is consistent with and familiar to that market has obvious benefits. The introduction of LLCs would also mean another tax transparent vehicle in a world very much conscious of Base Erosion and Profit Shifting (BEPS). Government also believes the LLC Law to be consistent with its policy of innovation.

Won't Jersey LLCs run up against the same issues in the UK as US LLCs (which led to the UK and Jersey adopting LLPs)?

In short, yes. However, the LLC is not (currently) aimed at direct investment into the UK, where for those very reasons we envisage the use of other Jersey vehicles to continue. Instead, it is more likely to be used as a US feeder vehicle. Recent UK case law also suggests (at least on a case-by-case basis) that the door for recognising LLCs as transparent entities in the UK may slowly be opening. If so, Jersey would be well-placed to take advantage.

Do other offshore jurisdictions have US-style LLCs?

Yes: the Cayman Islands and Bermuda both enacted LLC legislation in 2016, which was also reviewed and taken into account when preparing the LLC Law. The Isle of Man also has an LLC law (from 1996) although it was based on the Wyoming version. Given the popularity of the vehicle in the US, we anticipate other jurisdictions may also introduce their own versions.

How will LLCs be regulated in Jersey?

The JFSC state that LLCs may be formed upon registration with the JFSC following an application by an entity regulated by the JFSC with the relevant licence to provide formation purposes, and be subject to the usual requirement for a ‘COBO’ consent in order to raise capital. Every LLC will be required to have a nominated person and a secretary. In most cases, it is expected that an LLC will engage a Jersey-based financial services provider registered to carry on trust company business to provide such services, and therefore Jersey’s AML/CFT regime will apply. To the extent that any service provider or the LLC intend to carry on regulated activities, they should take legal advice as to their obligations under Jersey law. All of this echoes the approach for other Jersey entities and is designed to continue Jersey’s reputation as a highly regulated and compliant jurisdiction.

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Proposed Jersey LLCs compared with other Jersey vehicles

Feature	LLC	LTD	LLP	PCC
A body corporate	Optional	✓	✗	✓
Separate legal personality and able to hold assets / enter into contracts	✓	✓	✓	✓
Constitutional document is private	✓	✗	✓	✗
Subject to its constitution, management powers vest in members (unless managers are appointed) and each member (or manager) may bind the entity	✓	✗	✓	✗
Subject to its constitution, members (and managers) may be divided into classes for the purposes of voting and entitlement to distributions and may hold meetings (or provide written consent)	✓	✓	✓	✓
Formed by the filing of a declaration only	✓	✗	✓	✗
May be formed with and have a sole member	✓	✓	✗	✓
Subject to its constitution, members may be required to contribute cash, property or services (or promise of the same) with capital accounts credited and each member having an interest in the profits and losses of the entity but assets and liabilities of the entity belong to the entity	✓	✗	✓	✗
Subject to its constitution, members may be admitted without a contribution or acquiring an interest	✓	✗	✗	✗
Has the ability to create 'cells' or 'series', which may contract and hold assets in their own names	In due course	✗	✗	✓
Transparent for Jersey tax purposes	✓	✗	✓	✗

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