

UPDATE

# The LLC – a proposed new vehicle in Guernsey

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The States of Deliberation (the **States**) has approved proposals to introduce a new type of vehicle to Guernsey's existing range of business structures, namely the Limited Liability Company (also known as the LLC)

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The proposal in principle to introduce a limited liability company (LLC) into Guernsey's existing legislative, regulatory and tax framework (the **LLC Proposal**) has been considered, and ultimately approved, by the States at its meeting on 25 March 2021.

An LLC is a flexible hybrid structure combining the features of a company and a partnership, ie limited liability and separate legal personality (akin to a company) and tax transparency (similar to a partnership). An LLC is not dissimilar to a limited liability partnership (LLP), sharing some of the same key features.

LLCs already feature in a number of other jurisdictions such as the Isle of Man, Cayman Islands, Bermuda and most recently Jersey, and are used in a diverse range of roles such as general partners, management vehicles, carried interest vehicles, portfolio holding vehicles, joint venture vehicles and private equity vehicles.

LLCs have traditionally been associated with the United States (US) and it is anticipated that the introduction of the Guernsey LLC will ensure that Guernsey can compete with similar regimes in other jurisdictions and support the US market by giving US funds, fund managers and lenders the option of using a Guernsey vehicle with features and characteristics that they are already familiar with.

The LLC Proposal sets out certain key features of a Guernsey LLC.

- The LLC is a body corporate with separate legal personality and is tax transparent by default, ie the LLC itself is not subject to taxation (the profits are taxed at the level of members in the same way as the profits of a partnership). While tax transparency is the default position, it is proposed that an LLC can opt to make an irrevocable election at the point of establishment to be taxed as a company instead.
- The debts, obligations and liabilities of the LLC are solely the debts, obligations and liabilities of the LLC - no member or manager of the LLC should be personally liable solely by reason of being a member or manager of the LLC.
- A high degree of contractual freedom when determining the terms of the agreement governing the LLC (the **LLC Agreement**). The LLC Agreement sets out, among other things, the overall operation of the LLC, administrative procedures, the rights and duties of the members, allocation of profits and losses and distributions.
- The LLC can have one or more members who, subject to the LLC Agreement, may or may not receive an interest in the LLC. A person can be admitted as a member when the LLC is formed or subsequently, and whether or not the member has made a contribution.
- The ability to have different classes of membership, similar to different classes of shareholders in a company.
- The choice between appointing a manager or group of managers (who can be a member(s)) to manage the LLC (akin to directors of a company) or vesting management powers in the members.

- Flexibility to agree the parameters of the respective duties owed by managers of the LLC subject to a minimum fiduciary duty to:
  - act in good faith in the performance of their management duties and in the interests of the LLC, and
  - exercise reasonable care, diligence and skill.
- The ability to create 'series' of members, managers or LLC interests, which can have separate rights, powers or duties with respect to:
  - specified property or obligations of the LLC, or
  - profits and losses associated with specified property or obligations of the LLC (similar to a cell of a protected cell company). A 'series', which is a relatively new extension to the LLC structure, would not need to be independently registered, but an application to the Guernsey Registrar would be made to create a new 'series'.
- The LLC is required to have a registered office in Guernsey (similar to other Guernsey entities) and a resident agent in respect of beneficial ownership.
- Application for formation of the LLC must be undertaken by a corporate services provider, ie a full fiduciary licensee.
- The LLC can migrate into, and out of, Guernsey and amalgamate.

The combination of the above features makes the Guernsey LLC an extremely flexible and versatile vehicle which can be used in a wide variety of circumstances, including where limited liability partnerships, limited partnerships and limited liability companies are currently being used or have traditionally been preferred.

Should you have any questions on the proposed introduction of the Guernsey LLC, or its potential application in the context of any new or existing Guernsey structures, please get in contact with a member of our team.

## Contacts

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