

## The differences between Jersey and Delaware LLCs

	Jersey LLC	Delaware LLC
<b>1. Formation and administration</b>		
<b>Registration documents</b>	<p>A declaration is submitted to the Registrar of LLCs (the <b>Registrar</b>) signed by a person authorised by all intended members of the LLC. A LLC is formed when, upon receipt of the declaration, the Registrar issues a certificate of registration to the LLC.</p> <p>An amendment statement must be filed if any statement in the declaration was false or any information in the declaration (other than a change in registered office) was inaccurate when filed. Otherwise, there is no ongoing obligation to keep information in the declaration up-to-date.</p>	<p>A LLC is formed when a certification of formation is filed with the Delaware Secretary of State.</p> <p>A certificate of amendment must be filed if any statement on the certificate of formation was false when filed or that any matter described has changed making the certificate of formation false in any material respect.</p>
<b>Registers</b>	<p>A LLC must maintain and keep at its registered office:</p> <ul style="list-style-type: none"> <li>• a list of all managers, members, secretaries and (if any) deputy secretaries;</li> <li>• the declaration (and any statements delivered) and certificate of registration;</li> <li>• the LLC agreement (and amendments); and</li> <li>• a statement of all contributions made or to be made by the members and when such contributions were returned.</li> </ul>	N/A
<b>Registered agent</b>	<p>A LLC must, in practice, appoint a regulated Jersey corporate services provider to, among other things, provide registered office services. There is no requirement to appoint a registered agent.</p>	<p>A Delaware resident registered agent must be appointed (this may be an individual or company) for service of process.</p>
<b>Business licence</b>	<p>An LLC is generally exempt from the requirement to obtain a business licence in Jersey if it has no employees in Jersey and is administered by a regulated Jersey corporate services provider.</p>	<p>A Delaware business license is required if the LLC is actively engaged in business or trading within Delaware (ie providing goods and services in Delaware).</p>
<b>Secretary</b>	<p>Must appoint a secretary (and may appoint a deputy secretary) that is a company incorporated, or person ordinarily resident, in Jersey and is either a member or manager of the LLC or is registered under the Financial Services (Jersey) Law 1998 to carry on trust company business involving the provision of LLC secretarial functions.</p>	N/A

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<b>2. Decision making and corporate governance</b>		
<b>Decision making</b>	<p>Unless the LLC agreement provides otherwise:</p> <ul style="list-style-type: none"> <li>• if an LLC agreement does not provide for the appointment of managers or it does but none are appointed, management vests in the members;</li> <li>• a vote or consent of members is decided or given by members holding a majority of the total rights to the profits of the LLC (including a vote or consent to wind up the LLC). If that results in no members with a right to vote, a decision is taken by simple majority in number of members;</li> <li>• amending the LLC agreement and admitting new members requires the consent of all members; and</li> <li>• a vote or consent of managers is decided or given by a simple majority.</li> </ul>	<p>Unless the LLC agreement provides otherwise:</p> <ul style="list-style-type: none"> <li>• management vests in the members unless one or more managers are appointed;</li> <li>• a vote or consent of members is decided or given by members holding interests entitling them to more than 50 per cent of the profits of the LLC;</li> <li>• amending the LLC agreement and admitting new members requires consent of all members; and</li> <li>• dissolution requires the consent of members who own more than 2/3 interest in the profits of the LLC.</li> </ul> <p>No default voting thresholds are specified for votes or consents of managers.</p>
<b>Authority to bind the LLC</b>	<p>Unless the LLC agreement provides otherwise:</p> <ul style="list-style-type: none"> <li>• each manager has authority to bind the LLC; and</li> <li>• a member has authority to bind the LLC if no manager has been appointed or holds office.</li> </ul>	<p>Unless the LLC agreement provides otherwise, each member and manager has authority to bind the LLC.</p>
<b>Inspection of books</b>	<p>A manager or member may inspect and copy the documents a LLC is required to maintain at its registered office listed in section 1 above.</p> <p>The LLC agreement may restrict access to records of contributions made by other members and any other information the disclosure of which is believed in good faith not to be in the best interests of the LLC or which could damage its business or which the LLC is required by law or by agreement to keep confidential.</p>	<p>Members may obtain true and full information in respect of the status of the business and financial condition of the LLC, copy tax returns, the name and address of each member and manager, a copy of the LLC agreement (and amendments) and the certificate of formation (and amendments) and information regarding the contributions of each member. The LLC agreement may restrict access to such information.</p> <p>A manager may keep confidential from members information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the LLC or could damage the LLC or its business or which the LLC is required by law or by agreement with a third party to keep confidential.</p>
<b>Managers' duties</b>	<p>A manager owes a duty to the LLC to act in good faith in connection with the management of the LLC. Subject to the LLC agreement and to the duty of good faith, a manager does not owe any duty (fiduciary or otherwise) to the LLC or any member or other person in respect of the LLC.</p>	<p>If a member or manager or other person has duties (including fiduciary duties) to an LLC or to another member or manager or to another person that is a party to or is otherwise bound by an LLC agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the LLC agreement. The LLC agreement may not, however, eliminate the implied contractual covenant of good faith and fair dealing.</p>
<b>3. Distributions and clawback</b>		
<b>Distributions and clawback</b>	<p>An LLC may not make a distribution if, at the time the distribution is paid or immediately after payment, the LLC is unable to pay its debts as they fall due. If a member receives an unlawful distribution, or in the case of fraud, the member is liable to the LLC for the amount of the distribution. This clawback applies for six months.</p>	<p>A LLC may not make a distribution if, once the distribution has been made, the LLC's liabilities exceed the fair value of its assets (certain liabilities and property excluded). A member in knowing receipt of an unlawful distribution is personally liable to the LLC for the amount of the distribution. This clawback applies for three years.</p>

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<b>4. Redemptions and repurchases</b>		
<b>Redemptions and repurchases</b>	Subject to the LLC agreement, a LLC may repurchase or redeem any LLC interest or other interest of a member or manager if immediately following the repurchase or redemption the LLC does not become unable to pay its debts as they fall due. If a repurchase or redemption is made unlawfully in the six months before the commencement of a creditors' (ie insolvent) winding up of the LLC, a member is liable to the LLC for the amount of the redemption or repurchase if the LLC has insufficient assets for the payment of its liabilities and the expenses of the winding up.	Subject to the LLC agreement, a LLC may repurchase or redeem any LLC interest or other interest of a member or manager.
<b>5. Series</b>		
<b>Series</b>	Although the Limited Liability Companies (Jersey) Law 2018 ( <b>LLC Law</b> ) makes provision for series, the relevant provisions of the LLC Law have not yet been brought into force.	An LLC agreement may establish or provide for the establishment of one or more designated series of members, managers, LLC interests or assets. Any such series may 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, and any such series may have a separate business purpose or investment objective.  The liabilities of one series is enforceable against the assets of that series only, and not against the assets of the LLC generally or any other series, and, unless otherwise provided in the LLC agreement, none of the liabilities of the LLC generally or any other series is enforceable against the assets of that series.
<b>6. Insolvency of member</b>		
<b>Insolvency of member</b>	Subject to an LLC agreement, or unless all members otherwise consent, a person will be treated as having resigned as a member of a LLC immediately upon bankruptcy or insolvency.  Subject to the rules on making distributions, a resigning member is entitled to receive any distribution to which such member is entitled pursuant to the LLC agreement and, if not otherwise provided in the LLC agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's LLC interest as of the date of resignation based upon such member's right to share in distributions from the LLC.	Subject to the LLC agreement, or with the consent of all members, a person ceases to be a member of a LLC upon bankruptcy or insolvency.  Subject to the rules on making distributions, upon resignation permitted by the terms of an LLC agreement, a member is entitled to receive any distribution to which such member is entitled under the LLC agreement and, if not otherwise provided in the LLC agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's LLC interest as of the date of resignation based upon such member's right to share in distributions from the LLC.
<b>7. Winding-up/dissolution</b>		
<b>Voluntary dissolution</b>	An LLC may commence a summary (ie solvent) winding up, by: <ul style="list-style-type: none"> <li>• each manager (or managing member) signing a solvency statement;</li> <li>• either (a) the expiry of any fixed term or the occurrence of an event specified in the LLC agreement or (b) obtaining the vote or consent of members entitled to two thirds of profits; and</li> <li>• registering the solvency statement with the Registrar within 28 days of the date it was signed.</li> </ul>	An LLC may be dissolved and wound up: <ul style="list-style-type: none"> <li>• at the time specified in the LLC agreement or on the happening of any events set out in the LLC agreement;</li> <li>• where there are no members (subject to certain exceptions); or</li> <li>• unless the LLC agreement provides otherwise, on the vote or consent of members owning at least two thirds of the interest in the profits of the LLC.</li> </ul>

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<b>Termination of winding up</b>	Once the summary winding up commences, it may be terminated if the LLC: <ul style="list-style-type: none"> <li>• has not received any contributions from members;</li> <li>• has not distributed its assets to members; and</li> <li>• has discharged its liabilities.</li> </ul>	If an LLC agreement provides the manner in which a dissolution may be revoked, it may be revoked in that manner. Otherwise, provided that a LLC agreement does not prohibit the revocation of dissolution and no certificate of cancellation has been filed, the LLC will not be dissolved if the LLC is continued with the vote or consent of members.
<b>Appointment of liquidator</b>	Unless the LLC agreement provides otherwise, there is no requirement to appoint a liquidator on the commencement of a summary winding up. The managers or the members (if there are no managers) may wind up the business of an LLC. A liquidator must be appointed in the case of a creditors' (ie insolvent) winding up and may be appointed by the court in the case of a just and equitable winding up considered below.	Unless LLC agreement provides otherwise, the managers or the members (if there are no managers) or any other person approved by members owning more than 50 per cent of the LLC interests may wind up the business of an LLC. If the Court of Chancery orders the winding up of an LLC it may appoint a liquidating trustee.
<b>Completion of winding up</b>	On completion of the winding up, the managers (or liquidator) register a statement stating that the LLC has no remaining assets or liabilities whereupon the Registrar issues a certificate of cancellation.	When the certificate of cancellation is filed upon dissolution and completion of the winding up.
<b>Creditor initiated winding up or Judicial Dissolution</b>	The Royal Court of Jersey may wind up an LLC where: <ul style="list-style-type: none"> <li>• an application is made by a creditor with a liquidated claim of at least £3,000 who has served a statutory demand for payment which has not been discharged within 21 days; or</li> <li>• it is just and equitable to do so or it is expedient in the public interest. A member, manager, the Treasury Minister or the Jersey Financial Services Commission may make the application to the Royal Court.</li> </ul>	Upon application of any member or manager, the Court of Chancery: <ul style="list-style-type: none"> <li>• if cause is shown, may wind up an LLC; and</li> <li>• may decree dissolution of an LLC whenever it is not reasonably practicable to carry on the business in conformity with an LLC agreement.</li> </ul>
<b>8. Dual registration, continuance and conversion</b>		
<b>Dual registration, continuance and conversion</b>	An LLC cannot be dual registered in Jersey and in another jurisdiction at the same time. An LLC may continue into Jersey from another jurisdiction or continue out of Jersey to another jurisdiction. At the time of writing there is no statutory mechanism for other types of Jersey entity to convert into an LLC. However, a foreign LLC can merge with a Jersey LLC resulting in a merged body that is either the merging Jersey LLC or a new LLC.	Any non-United States entity may become domesticated as an LLC in Delaware by complying with a statutory procedure. An LLC may continue into Delaware from another jurisdiction or continue out of Delaware to another jurisdiction. There is a statutory procedure for other types of Delaware entity to convert into an LLC.

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