

Brief - Isle of Man Limited Liability Companies

Background

This briefing note is intended to provide essential information on the formation and management of Isle of Man limited liability companies. In addition, it hopes to outline some of the practical uses of limited liability companies.

Isle of Man Limited Liability Companies' Legislation

In 1996 the Limited Liability Companies Act was passed which governs Isle of Man limited liability companies.

Introduction

Isle of Man limited liability companies ("LLCs") are simplified corporate structures that have a relationship to Isle of Man partnerships. LLCs have no requirement for directors, and it is the members of the LLC who determine the governance of the LLC much like a partnership.

There is no formal requirement for an Isle of Man LLC to submit audited accounts to the Companies Registry, and as a result Isle of Man LLCs are regarded as a simplified version of an Isle of Man company.

In addition, because LLCs are tax transparent, many individuals find LLCs suitable for structuring their assets as part of a wider wealth planning mechanism.

Formation

The limited liability company is governed by its Articles of Organisation, and its Operating Agreement, which is a private document covering the internal regulation and control of the LLC.

The Articles of Organisation and the Operating Agreement need to be registered with the Isle of Man Companies Registry and once satisfied that the appropriate documentation has been received, the Companies Registry will issue a certificate of organisation which is proof of registration.

Articles of Organisation

The articles of organisation must include the following:

- The name of the LLC. Every LLC name must be approved by the Companies Registry;
- Members. The names and addresses of the members;
- Registered Agent. The name and address of the Registered Agent, who must be qualified to act as Registered Agent as set out under the Limited Liability Companies (Registered Agents' Qualifications) Regulations 2003;
- Capital Contribution. The total amount of the capital contribution made by the members;
- The right of the members, if any, to admit additional members;
- The right of a member to receive out of the property of the LLC repayment of all or a part of his capital contribution;
- Appointment of a Manager. Whether the members are permitted to appoint a manager.



Partnership

Name

The chosen name of the LLC must not be misleading or undesirable. The name of a limited liability company must end with “Limited Liability Company” or “LLC”.

An informal indication as to whether a name is likely to be approved can be obtained from the Companies Registry and the name can be reserved.

Beneficial Ownership

The identity of the ultimate beneficial ownership must be disclosed on a confidential basis to the Companies Registry. If held in trust, the name of the trust, trustees and name and address of the settlor must be disclosed. The identity of the registered members of the LLC must be disclosed (on a public basis) annually.

Incorporation Fee

There is a statutory incorporation fee of £100 payable in respect of an LLC. The additional fast track fee is £200 for a 2 hour incorporation or £500 for a ‘while you wait’ incorporation.

Governance and Management

LLCs do not have directors and the members of the LLC can manage its affairs. However, it is permissible to appoint one or more managers to manage the LLC in accordance with the terms of the Operating Agreement.

Two or more members are needed for an LLC. The liability of the members is limited to the amount of their capital contribution as set out in the Articles of Organisation. Membership is not transferable or assignable.

There is no statutory requirement for any formal meetings of members, nor is there any requirement for the preparation of annual financial statements, although the Act does require that “the accounting records shall be sufficient to show and explain the company’s transactions”.

Charges on the assets of the LLC must be registered, as is the case with a company. Where appropriate, any amendments to the Articles of Organisation must be filed at the Companies Registry.

An annual return must be made to the Companies Registry, setting out the details of the members and any manager. Any changes that are made to the LLC during the year must be notified to the Companies Registry.

Registered Agent

Every Isle of Man LLC must have its registered agent in the Isle of Man. The Registrar must be satisfied before:

- a) registering an LLC; or
- b) approving a change of address, that the occupier of the premises proposed to be used as the registered office has authorised the use of the premises for that purpose. If the Registrar ceases to be satisfied that the authority to use an address as a registered office remains effective he may require the relevant company to change its address.

Ongoing Administration

Annual Returns

Before the end of February in each calendar year, every LLC must deliver an annual return to the Companies Registry and pay the filing fee of, currently, £95. The annual return must set out details of the LLC's member's capital and its members. Failure to deliver an annual return by the end of February will result in a late filing fee becoming payable. If no annual return has been delivered by the end of June, the LLC will be liable to be struck off by the Companies Registry.

Accounts

As stated above there is no on-going obligation for an LLC to keep accounts, although, an LLC must maintain sufficient accounts to demonstrate the underlying activity of the LLC.

Registers

Every company must keep registers containing specified details of its members. The register of members may be kept either at the company's registered office or at any other place in the Isle of Man where it is made up.

Resolutions

A printed copy of every:

- special resolution;
- written resolution or agreement which, if passed in general meeting, would not have been effective unless passed as a special resolution;
- written resolution or agreement which, if passed in meeting of that class of members, would not have been effective unless passed by a particular majority; and
- resolution or agreement which binds all the members although not agreed by all of them, must be delivered to the Companies Registry.

Special resolutions of a company are required for the following (although this list is not exhaustive):

- change of company name;
- alteration to the Articles of Organisation and the Operating Agreement;
- alterations to member capital; and
- winding-up.

Seal and Stationery

An Isle of Man LLC is not required to have a common seal, but if it does the seal (and any duplicate seal) must bear the company name in full. It may also have a duplicate official seal, a branch seal for use outside of the Isle of Man and an official seal for securities. The full name of the company and the address of its registered office must appear on its stationery.

Uses of an Isle of Man LLC

In many cases, conventional companies are complex and costly to administer. The requirement for the separation of ownership (shareholders) from management (directors), the need for annual general meetings, etc. are inappropriate for a small holding company, or a small trading business. The LLC can offer a viable, flexible alternative in this regard.

Taxation of LLCs in Isle of Man

LLCs are fiscally transparent and taxed as a partnership, thus an LLC with no Isle of Man resident members or business in the Isle of Man is not taxed in the Isle of Man. Distributions made to non-residents of the Isle of Man from LLCs taxed at 0% are subject to withholding tax at the rate of 0%.

VAT Registration and EU Trading

Although the Isle of Man is not a member of the EU, it has the distinct advantage of being part of the customs territory of the EU under Protocol 3. An LLC can register for VAT in the Isle of Man if it maintains a place of business in the Isle of Man. It is therefore possible for Isle of Man LLCs and foreign companies to make advantage of the Isle of Man 0% corporate tax rate whilst obtaining the benefits of VAT registration for trade in the EU.

Why the Isle of Man

The Isle of Man has a significant number of different types of companies, each of which might be suitable for use in a different set of circumstances. In addition, the legal system is strong and has been extensively tested since the Limited Liabilities Companies Act was passed in 1996 and as a result many clients take confidence in the Isle of Man as an LLC jurisdiction of choice.