

# LIMITED LIABILITY COMPANY ACT 2016

Bermuda's Limited Liability Company Act 2016 came into force on 1 October 2016. This significant piece of legislation was introduced to further modernise the legislative framework and to increase Bermuda's appeal in comparison with other offshore jurisdictions. It is anticipated that this new corporate product will help position Bermuda as a preferred jurisdiction for the offshore private equity market, as it offers significant advantages over a limited partnership structure and is an entity with which many investment funds and managers are familiar. However, it can be used for any type of business purpose, including as a trading or financing entity and as an investment holding entity.

## Benefits of a Limited Liability Company

The new Bermuda limited liability company (LLC) offers great flexibility and ease of operation. It is based on the Delaware LLC model and as such will be familiar to clients and advisers who are based in or do business in the United States.

The LLC is a hybrid entity, with aspects that are similar to both limited companies and partnerships. An LLC may elect to have separate legal personality as distinct from its members, like a company. Members of an LLC are not generally personally liable for the debts and obligations of an LLC, similar to shareholders of a company or limited partners in a limited partnership. However, unlike limited partnerships, members of an LLC will not be personally liable for the debts and obligations of the LLC if they participate in the management and operations of the LLC.

The relationship between an LLC and its members is governed by an LLC agreement, which enables it to be more commercially flexible because its constitution and the manner in which it operates are largely subject to agreement between its members as opposed to being subject to statute. As such, members of an LLC have freedom of contract with respect to matters such as voting, meetings and governance, allocation of profits and losses and distributions. It is possible for the LLC agreement to include provisions that expand, restrict or eliminate the duties (including fiduciary duties) that are owed to the LLC by a person or to another member or manager or other person (provided that it is not possible for such provisions to permit fraud or dishonesty).

The formation process is straightforward, involving filing of a certificate of formation with the Registrar of Companies and payment of the application fee. The Registrar of Companies will maintain a register of LLCs.

## Key Features

Some of the key features of an LLC are:

- it may be formed by one or more members with each member having an interest in a capital account (similar to a partnership) as opposed to shares in a company;
- it is a separate legal entity which continues until it is dissolved and which (subject to the LLC agreement) has the capacity, rights, powers and privileges of a natural person;

- it can be managed by its members, with no need for a board of directors or a general partner;
- an LLC may be converted into a Bermuda company and vice versa;
- an exempted LLC may convert into a Bermuda exempted limited partnership and vice versa;
- an LLC may be continued into Bermuda from a foreign jurisdiction and vice versa;
- an LLC may amalgamate or merge with another LLC or with a foreign entity;
- it is possible for a charge over the assets of an LLC to be registered in Bermuda in the register of charges to be maintained by the Registrar of Companies. Upon registration, the charge will have priority over any unregistered or subsequently registered charges over the same assets.

CHW's corporate team are well placed to advise on the formation of LLCs and all aspects of Bermuda law relating to LLCs. For further information, please contact Natalie Neto (nneto@chw.com) or any member of the CHW corporate department.

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