**Company and commercial**  

**Bermuda LLCs: a new entity in a familiar form**

With its provenance in Delaware legislation and an unrivalled flexibility, the new Bermuda LLC is a very attractive business structure.

Bermuda’s new Limited Liability Company Act 2016 provides for the formation and operation of limited liability companies (LLCs), entities that will be familiar to those with experience of Delaware LLCs. The central provisions of the act were closely modelled on the corresponding provisions of the Delaware LLC legislation, so that Bermuda LLCs look, feel and operate much like Delaware LLCs. Bermuda LLCs, like their Delaware counterparts, are extremely flexible and simple to operate.

A Bermuda LLC is a separate legal entity, and its members have limited liability, much like a corporation. In common with a partnership, however, the affairs of a Bermuda LLC are governed by an agreement rather than by statutorily mandated constitutional documents. This affords great flexibility as the act, like the Delaware legislation, expressly provides that maximum effect is to be given to the principle of freedom of contract in relation to LLC agreements.

This ability to tailor the constitution and the corresponding simplified corporate governance of Bermuda LLCs make them ideal for a wide range of activities ranging from asset holding companies to joint ventures to complex financing structures.

**Ownership vs management**

Bermuda LLCs are not required to have a separation of ownership and management and can be managed by their members, obviating the need for a board of directors or a general partner. Alternatively, one or more non-member managers can be appointed if that is what the parties desire. Similarly, the activities of a Bermuda LLC can be as broad (in the case of an active business) or restricted (in the case of a special purpose vehicle) as desired, and third-party protections (e.g. to give comfort to lenders) can be drafted into the LLC agreement.

The LLC agreement can also provide great flexibility in regulating the relationship between the members and managers. The agreement can grant voting rights to all or some, or to any specified class or group of, members or managers on any desired basis. Members may be admitted and receive an LLC interest (i.e. a share of the Bermuda LLCs profits and losses and a right to receive distributions) without any obligation to contribute to the LLC, or may be admitted without receiving an LLC interest. LLC interests may be assigned in whole or in part and members may grant security over their LLC interests.

There is also great scope to customise the duties of members and managers to the Bermuda LLC and to each other. Any such duties that would otherwise exist at law or in equity (including fiduciary duties) may be expanded, restricted or even eliminated by the LLC agreement – except that fraud and dishonesty cannot be permitted. The act also expressly permits members and managers to vote in their own self-interest.

It is possible to provide for specified penalties or consequences against any non-performing member, including the subordination, reduction, forced sale or forfeiture of the defaulting member’s LLC interest, which the act expressly states are enforceable.

Furthermore, any security interest granted over the assets of a Bermuda LLC can be registered in Bermuda, and the registration will ensure priority under Bermuda law over any unregistered and any subsequently registered security interests. This provides important certainty to lenders.

**Moves, mergers and amalgamations**

In relation to fundamental changes, Bermuda LLCs are again extremely flexible. They are able to merge or amalgamate with other Bermuda LLCs or foreign entities; discontinue from Bermuda and continue in another jurisdiction; and convert to Bermuda limited partnerships with separate legal personality or Bermuda corporations. In addition, such limited partnerships and corporations can convert to Bermuda LLCs, and foreign LLCs can move to Bermuda by continuing as Bermuda LLCs.

Finally, the procedure for winding up and dissolving Bermuda LLCs follows closely the well understood corresponding regime for Bermuda corporations. This provides a sophisticated structure and certainty when dealing with the liquidation of complex businesses.

The Bermuda LLC is a flexible commercial vehicle designed to enable parties to more easily reflect their commercial agreement in the entity’s constitution. This is achieved by providing primacy to the principle of freedom of contract. And with its roots in existing Bermuda and Delaware legislation, the act comes with good provenance.

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