

## Isle of Man Limited Liability Company

The Limited Liability Company (LLC) is a well-established concept which has its origins in the United States. The Isle of Man LLC offers considerable benefits.

### Key Features

- The LLC has separate legal identity from those of its members
- Liability of members is limited to the extent of their capital contribution
- Tax transparent – profits are treated as income of the members for income tax purpose
- Restriction of transfer of members' interests
- Management may be by the members, in proportion to their interest, or by a manager
- Ideal structure for partnerships and joint ventures
- No annual corporate charge
- Formation is by registration of articles of organisation
- An operating agreement is drafted to govern the operation of the company

It combines the features of a corporation with many of those of a partnership, but is treated for tax purposes as a partnership.

If the members themselves are resident in a low tax jurisdiction the benefits are obvious.

Unlike a partnership, the members have the advantage of limited liability.

The result of this is that onshore trading with a tax transparent vehicle becomes a distinct possibility.

### Operation of the LLC

There are no shareholders or directors. Powers are instead given to members and where required managers.

One of the fundamental concepts associated with the LLC is the ability of its members to draft an operating agreement with the broadest possible discretion, giving it flexibility difficult to equal with more traditional corporate structures.

Members can contract amongst themselves concerning the management and standards governing the internal affairs of the LLC, including the establishment of different classes of members, voting procedures, and the conduct of meetings amongst many other things.

The LLC has no share capital, instead being capitalised by a contribution from the members of the LLC, which can be in the form of property, cash, services rendered, promissory notes or indeed any binding obligation to provide any of these things.

There must be a minimum of two members and the liability of each member is limited to the amount of his contribution. The manner in which initial and any future contributions may be made and accepted are set out in the articles of organisation.

An LLC has no directors, nor does it have a secretary. Management may be undertaken by the members or by the managers appointed by the members. Again, the ability of the members to appoint a manager must be set out in the articles of organisation.

It is possible to appoint a corporate manager to an Isle of Man LLC and the manager need not be resident in the Isle of Man, perhaps being managed by a professional elsewhere.

The manner of the ongoing management of the LLC is set out in the operating agreement, which can be considered to have

a similar purpose to the articles of association in a normal private limited company.

An Isle of Man LLC must have a professionally qualified registered agent appointed at the outset and must maintain a registered office in the Isle of Man.

Information available on the public register is limited to the name of LLC, the date of formation, the registered office address and details of the registered agent.

There is no requirement for an Isle of Man LLC to file accounts.

It would be quite normal for nominee members and, if required, a manager to be appointed who are resident offshore, thus ensuring that management and control are seen to be exercised from a tax neutral jurisdiction. This structure also gives rise to certain opportunities in asset protection.

### Uses

- Joint ventures
- Asset finance including aircraft finance and leasing. LLCs are ideal structures for sale and lease-back arrangements, given that loan interest can be paid free of any Isle of Man withholding tax
- Asset protection
- Ship owning
- Some of the world's leading ship management companies have established themselves in the Isle of Man and the LLC is seen as an ideal vehicle for shipping related activities, especially because it shares so many characteristics of a partnership

The LLC cannot be used for any estate planning, but it is quite possible to establish a trust on top of the LLC and so have the best of all worlds.

### Case study

Our client establishes the trust, which would usually be a revocable trust and typically be established in Nevada or Alaska.

This trust is not there for asset protection purposes in itself, but merely for the basic estate planning opportunities it provides.

Because the trust is revocable it will be wholly tax neutral as has always been the case.

The trustee now joins into an Isle of Man LLC, and the assets of the trust will be the trustee's capital contribution to the LLC. This contribution will be a matter of public record.

The LLC will, in fact, be set up with three members in total, the additional two in this case being offshore members. The offshore members' interest will be a minority one, with probably less than 1 per cent between them, which they are in effect holding on trust for the client.

The operating agreement will state that all decisions must be unanimous and it is essential to include provisions that restrict the ability of individual member to make or force any distributions. Distributions to members need not be in cash, but in any form agreed (unanimously) by the members.

Even if he persists and manages to persuade a Manx court to grant a charge over the interests of the US member, he will find that the operating agreement and side agreements that have been in place will in fact effectively prevent any distributions being made.

Interestingly, for tax purposes, because the LLC is tax transparent, the creditor will find himself in a position where he is now entitled to the distributions should they ever be made, he will be taxed on any taxable events inside the LLC. He will have to pay tax on profits that are never distributed to him.

So the second option open to the creditor is to apply to the US courts and try to force the US trustee to resign as a member of the LLC, thereby forcing the liquidation of the LLC.

But even if he is successful, the two offshore members will resolve to continue the LLC and to buy out the retiring members interests. Remember again the side agreement.

Only a promissory note will be issued to the retiring member, which he is then forced to pass on to the creditor. The side agreement then falls away.

Now, the creditors still do not have possession of the real assets and would have to wait for many years before those assets actually materialise. All the creditor can do is wait.

In the meantime, the LLC continues to function exactly as before although the remaining members may well decide to appoint a new manager, who is in fact the original client.

That manager will of course be granted a generous contract with salary, insurance and pension, benefits and, crucially, a substantial severance payment should the LLC ever go into liquidation.

The Isle of Man LLC proves itself to be an effective, extremely robust and, relatively inexpensive structure.

### **Why the Isle of Man?**

- Politically and economically stable
- Approved by OECD, FATF etc
- Low administration costs
- Good professional infrastructure
- Excellent communications
- Convenient time zone

### **Summary**

The Isle of Man LLC provides:

- Limited liability
- Separate legal identity
- Tax transparency
- High level of international recognition and acceptance
- Combines feature of corporation and partnership
- With the appropriate structuring and its own inherent qualities it can be an effective trading, asset holding or asset protection vehicle

### **What ILS can provide**

- Structuring and establishing of the LLC
- Drafting of articles of organisation
- Drafting of operating agreement
- Creation of an owning trust
- Establishment of bank accounts
- Administration
- Accounting
- Officers of the company, subject to restrictions

***Please note that ILS (Isle of Man) Limited does not offer tax advice. If you are not professionally qualified to give tax advice, we will be happy to make an appropriate introduction.***