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The Collas Crill guide to Jersey Limited Liability Companies (LLCs)

FEBRUARY 2023

As of 14 February 2023, the legislation, policy and guidance facilitating the full introduction of the Jersey LLC (including an ability to elect to be a body corporate) comes into force.

An LLC is a vehicle that combines elements of the flexibility and privacy of a partnership but with separate legal personality as well as limited liability for members in respect of their 'interests' in the LLC in a manner similar to a corporation.

An LLC can also benefit from tax transparency in a similar way to a partnership.

The Jersey LLC provides a familiar vehicle to US investors, advisers and their clients for a variety of structuring and investment purposes that are administered in the UK time zone within a stable, well-regulated and cost-effective international finance centre.

The Jersey LLC will be of interest particularly where there is a desire for US style constitutional documents and client service/approach, but where a European nexus requires time-zone compatibility for investors, managers or the administration of assets.

This guide is intended as such and should not be considered as legal advice.

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1. What can a Jersey LLC be used for?

A Jersey LLC is a useful and flexible option for a wide variety of uses including:

- Holding vehicles;
- Jersey private funds (JPFs);[1]
- Feeder vehicles – particularly for sovereign/treaty-qualified investors;
- 'Blocker' vehicles for US tax purposes (rather than Jersey) where the LLC elects to be opaque in the US but wants to take advantage of the default treatment to transparency in other jurisdictions like Jersey;
- Securities issuance vehicles, such as issuing debt instruments;
- Securitisation vehicle;

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- Acting as a manager to other vehicles (including as an AIFM providing it doesn't have to be regulated for any of the business set out below).

A Jersey LLC will not be subject to the City Code on Takeovers and Mergers, and may be listed if not regulated as a JPF.

It will also be compatible with Jersey's AIFMD regime to facilitate private placement into the UK/EU in a similar manner to Jersey's other entity types.

It is anticipated that the Jersey LLC will be a vehicle predominantly used for financially sophisticated investors/customers, where the proposed activities of the LLC are to be carried out mainly outside Jersey, with a focus on the North American market.

It is important to note that the Jersey LLC is not capable of being a regulated vehicle for certain types of activities in Jersey, including:

- a bank under Banking Business (Jersey) Law 1991;
- a public fund under the Collective Investment Funds (Jersey) Law 1988 – an LLC can be a JPF where the offers and/or investors are limited to no more than 50 but not a public fund with unlimited offers;
- an insurance business under the Insurance Business (Jersey) Law 1996; or
- registered to carry on Investment Business, Trust Company Business, General Insurance Mediation Business, Money Service Business or Fund Services Business under the Financial Services (Jersey) Law 1998 (**FSJ Law**).

2. Legal status, capacity and powers

LLCs have separate legal personality and the capacity, in their own name, to sue and be sued, to incur debts and obligations, and to acquire and dispose of assets.

Except as otherwise provided by the Jersey LLC Law and the LLC agreement, the debts and other liabilities of an LLC shall be solely the debts and other liabilities of the LLC, and neither a member nor a manager of an LLC shall be personally liable for any such debts or other liabilities of the LLC solely by reason of being a member or acting as a manager of the LLC.

A Jersey LLC may be formed for any lawful business, purpose or activity, whether or not for profit, has unlimited capacity and shall possess and may exercise all powers and privileges granted by the LLC agreement or law.

3. Body corporate or non-body corporate?

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From 14 February 2023, it is possible for a Jersey LLC to elect on registration to be a body corporate or not. This is a one-off irrevocable election.

It is not possible for a Jersey LLC that is registered prior to that date as a non-body corporate to switch to body corporate status.

Whilst we understand that the Delaware and Bermudan LLCs are not expressly a body corporate, this enables a Jersey LLC to be a body corporate in a similar manner to a Cayman LLC if required.

Adopting this classification may also be useful where required to utilise regulatory exemptions or requirements that stipulate this status as mandatory in certain jurisdictions.

4. Establishment and how long does it take?

The establishment and registration process for a Jersey LLC can be straightforward and, depending on the level of fee paid, can take as little as two hours.[2]

An LLC is established primarily through the filing of a declaration with the JFSC registry (similar to articles of organisation in the US) confirming basic information in relation to the proposed Jersey LLC.

In addition, information in relation to the activities of the LLC and its ultimate beneficial owners will require to be provided together with the relevant fees.[3]

The name of a Jersey LLC must end with the words “Limited Liability Company” in full or either of the abbreviations “LLC” or “L.L.C.” Notwithstanding its registered name, a limited liability company may use such words and abbreviations interchangeably when providing its name in the ordinary course of business where convenient, provided such use is not misleading.

5. What information is publicly available?

The following information is available on the JFSC registry for payment of a fee:

- The declaration filed to establish the Jersey LLC detailing the names and addresses of the initial manager (if any) and member(s) upon registration; and
- The entity profile which confirms:
  - the LLC's address;
  - the identity/details of significant persons (a manager of the LLC or, if there is no manager, the members involved in the management of the LLC);
  - whether the LLC is a body corporate or not;

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- the registration number;
- the registered office; and
- the date of registration.

The LLC agreement and ultimate beneficial ownership information (beyond the identity of the initial member(s)/manager) is not publicly available.

6. The Jersey LLC agreement

The Jersey LLC agreement (also known as an operating agreement) must be in writing and will be governed by the law of Jersey.[4]

The form the LLC agreement takes can be flexible and there are limited mandatory content requirements:

- A Jersey LLC can be entered into (if not already existing) before, after or at the time of delivery of a declaration to the Registrar, and may be made effective as of the date of the certificate of formation or at such other date as specified in the LLC agreement.
- A Jersey LLC is not required to execute its LLC agreement and is bound by its terms whether or not it executes it.
- Each member and manager (if any) of a Jersey LLC is bound by the LLC agreement (which shall be enforceable) whether or not the member or manager executes the LLC agreement and an LLC agreement of an LLC having only one member will not be unenforceable by reason of there being only one person who is a party to the LLC agreement.
- A Jersey LLC agreement may confer rights on a third party and provide for the way in which those rights may be varied or extinguished. However, if an LLC agreement does not provide otherwise, those rights may only be varied or extinguished with the consent of the third party and despite not being a party to an LLC agreement, a third party is entitled to enforce any rights conferred on the third party in an LLC agreement. If an LLC agreement provides for the manner in which it may be amended, it may be amended only in that manner or as otherwise permitted by the LLC Law and if the LLC agreement is silent as to the manner of amendment, it may be amended with the unanimous approval of all members or as otherwise permitted by the LLC Law.

7. Jersey LLC governance

One of the key benefits of a Jersey LLC is that there is a lot of flexibility in terms of how the LLC organises its governance and management.

A manager may be appointed rather than directors, although it is not required to have a manager. The manager can be a company or an individual and does not need to be a Jersey resident. There can be more than one

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manager.

If no manager is appointed, the members will carry out the management of the LLC. Subject to the Jersey LLC agreement, a member shall have the authority to bind the LLC if no manager has been appointed or holds office.

A manager need not be resident in Jersey, however the practical consequences of economic substance and tax requirements (see below) may dictate that if the LLC is to be Jersey tax resident, it is probably most straightforward to have a Jersey manager appointed.

Unlike corporate directors of a Jersey company, which are required to be regulated to carry on trust company business (**TCB**), a corporate manager of a Jersey LLC is not required by the LLC Law to be registered by the JFSC to carry on TCB.[5]

8. Registered office, secretary and administration

A Jersey LLC shall have a registered office in Jersey (which is authorised by the occupier of the premises).

A Jersey LLC must have a secretary and may appoint a deputy secretary, but unlike in a company, the secretary is not a significant person for the purposes of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 (**Disclosure Law**).

The secretary may be a company with a registered office in Jersey or an individual resident in Jersey, or a company or individual registered under the FSJ Law to carry on TCB.

Every Jersey LLC must appoint a nominated person to act as the main contact with JFSC registry and to provide them with information.

The COBO consent granted to a Jersey LLC will require that administration services are to be provided on establishment and on an ongoing basis by a person registered by the JFSC under the FSJ Law to carry on TCB.

9. Managers and duties

A manager (including a member where no manager is appointed) will not owe any duty, fiduciary or otherwise, to the LLC, a member of the Jersey LLC or any other person other than to act in good faith with respect to the management of the Jersey LLC.

The duties of the manager can be expanded in the LLC agreement.

A breach of that duty may, subject to the LLC agreement, be authorised or ratified by all the members provided that the LLC is cashflow solvent after the act or omission which constituted such a breach.

Subject to the LLC agreement, a Jersey LLC may indemnify any member, manager or other person from and against all claims and demands.

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10. Members, liability and capital structure

A Jersey LLC must have at least one member (who need not be a Jersey resident).[6]

Subject to the LLC agreement, members can limit their liability to the amount they have agreed to contribute to the LLC.

There are no minimum capital requirements (subject to any investor requirements for particular exemptions or regulatory classifications such as JPFs) or requirements for the LLC to state an authorised or minimum capital.

A person may be a member and a manager at the same time in the LLC. Members hold LLC interests rather than shares and, similar to a limited partnership, may have their interests represented by a capital account and the LLC agreement may set out different classes of interests with varying rights as between classes.

Members of a Jersey LLC may be admitted without a contribution or acquiring any LLC interest, subject to the terms of the LLC agreement.

The contribution of a member to a Jersey LLC may be in the form of cash, property or services rendered, or an undertaking or other obligation to contribute cash or property or to perform services.

The Jersey LLC agreement may set out the voting rights of LLC interests and the manner in which the profits and losses of an LLC shall be allocated among the members. If the LLC agreement does not provide for the allocation, profits and losses, they will be allocated on the basis of the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

The rights and duties of the members in an LLC shall, as between themselves, be determined by the LLC agreement.

Subject to the LLC agreement, a Jersey LLC may acquire, by purchase, redemption or otherwise, any LLC interest or other interest of a member or manager in the LLC if immediately following the acquisition, the LLC does not become insolvent.

Notwithstanding any such acquisition, a Jersey LLC may not become a member of itself and any such LLC interest so acquired by the LLC shall be deemed cancelled.

11. Borrowing, guarantees and security of a Jersey LLC

Subject to the LLC agreement, a member or manager may:

- lend money to;
- borrow money from;

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- act as surety, grantor or endorser for; or
- guarantee or assume one or more obligations of, provide collateral for and transact other business with an LLC and, subject to any other enactment, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

A Jersey LLC shall have clearly stated on all its business letters, statements of account, invoices, order forms, notices and other official publications, and on negotiable instruments and any letters of credit signed on behalf of the LLC:

- its name;
- any number or other identifying code assigned to it by the JFSC registry; and
- the phrase “registered as a limited liability company in Jersey”.

12. Distributions

A Jersey LLC can make distributions or release a member from the performance of an obligation provided it is cashflow solvent.

For a period of six months from the date of the distribution/release, where the LLC was insolvent or in the case of fraud, the member is liable to the Jersey LLC for the amount of the distribution or for performance of the obligation purportedly released.

13. Series

At present, Jersey LLCs will not be permitted to issue 'series' (similar to cells) under the LLC Law, although this position regarding series may be subject to change in future.

14. Accounts and audit

Generally, a Jersey LLC need not be audited unless it circulates a prospectus or its LLC agreement requires it.

A Jersey LLC must keep accounting records or returns that are sufficient to show and explain its transactions and to disclose its financial position with reasonable accuracy at any time.

Accounts prepared by an LLC must:

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- be prepared in accordance with generally accepted accounting principles; and
- specify which generally accepted accounting principles have been adopted in their preparation.

Provisions in respect of the accounts and audit of a Jersey LLC are set out in the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022.

15. Statutory records

A Jersey LLC is required to maintain and keep at its registered office (and potentially provide them to the JFSC registry on request):

- a register containing a list of the name and address of each member, manager, deputy secretary and secretary;
- a copy of the declaration;
- a copy of any other statement delivered to the JFSC registry;
- a copy of the certificate of formation and any other certificate issued by the JFSC registry;
- a copy of the LLC agreement and each amendment made to it;
- a statement of the amount of any contributions agreed to be made by each member and the time at which, or events on the happening of which, the contributions are to be made;
- a statement of the amount of money and nature and value of any other property or services contributed by each member and the dates that the contributions were made;
- a statement of the amount of contributions returned to members and the dates that the contributions were returned; and
- such other particulars as may be prescribed.

16. Winding up/dissolution

The winding up and dissolution provisions for a Jersey LLC are broadly similar to those for a Jersey company. An LLC shall be dissolved and have its affairs wound up only pursuant to the LLC agreement and by law.

The Limited Liability Companies (Winding Up and Dissolution) (Jersey) Regulations 2022 set out the procedures for:

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- winding up at the end of a fixed period or upon a particular event of a limited life company;
- (solvent) summary winding up;
- (insolvent) creditors' winding up; and
- winding up on just and equitable grounds.

Accordingly, an LLC can typically be wound up and dissolved by its manager (or members in whom management is vested) at the point where such manager/member(s) can provide a solvency statement that the LLC has no assets and no liabilities. A liquidator can (but need not) be appointed to conduct a solvent winding-up process.

For a solvent winding up, the Jersey LLC must:

- within 28 days after a statement of solvency has been signed by the manager (or members in whom management is vested), obtain the approval of the members for the LLC to be wound up summarily; and
- within 21 days of obtaining the approval, give notice of it to the JFSC registry together with the statement of solvency.

On the registration by the JFSC registry of a statement of solvency stating that the LLC has no assets and no liabilities, the Jersey LLC is dissolved.

17. Tax treatment of Jersey LLCs

A Jersey LLC is tax transparent for Jersey taxation purposes, but it is envisaged that it can elect to be treated as either a partnership or a company for US taxation purposes.

As a foreign/non-US LLC, care should be taken where there is a US nexus to ensure the correct US taxation treatment is checked and obtained as, unless an election is made, a default US tax treatment may apply that could be different to the default for a US LLC depending on issues such as whether there is a single member or the extent to which all members have limited liability. Tax advice should be taken.

For members of a Jersey LLC, the Jersey taxation treatment is broadly similar to limited partners in a Jersey limited partnership.

Under the Income Tax (Jersey) Law 1961 the income and property of a Jersey LLC must be treated as the income and property of its members.

The income of a member of a Jersey LLC for a financial period includes the proportion of the LLC's income that is attributable to the member[7] for the financial period, regardless of the amount distributed to the member

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during the financial period.

The non-Jersey source income of a non-Jersey resident member is out of scope for Jersey income tax purposes.

Profits made from Jersey source income are taxed in the hands of members as it arises to the LLC. The act of distribution does not raise any tax issues in Jersey. Profits from non-Jersey source income and Jersey bank deposit interest of an LLC will not be taxed in Jersey.

Interest payments by a Jersey LLC to non-resident member or non-resident payee (not being a member) are out of scope for Jersey income tax.

In Jersey there is no withholding tax on dividends, interest, or royalties paid by Jersey LLCs to non-residents, and there is no capital gains tax, no inheritance tax and no stamp duty payable on the transfer of LLC interests, save where a grant of probate is required.[8]

Tax residency is not relevant to the taxation of Jersey LLC members and is only relevant to the question of whether an LLC has to comply with the economic substance regime. The Taxation (Companies – Economic Substance) (Jersey) Law 2019 has been extended to LLCs.

An LLC is resident in Jersey for tax purposes unless its business is centrally managed and controlled in a country or territory outside of Jersey where:

- the highest rate at which an LLC or its members may be charged to tax on any part of its income is 10% or higher; or
- the LLC or its members are required to satisfy a test that is substantially the same as the economic substance test in Article 5 of the Taxation (Companies – Economic Substance) (Jersey) Law 2019.

A direction was made in May 2022 under Article 60(h) of the Goods and Services Tax (Jersey) Law 2007 (**GST Law**) so that LLCs qualify as an international services entity[9]. The GST Law will also be amended to recognise LLCs.

Jersey has a tax information exchange agreement (entered into on 23 June 2006) with the United States but there is not a double taxation agreement between the jurisdictions. As such, issues such as the extent to which members of an LLC are based in the US, the extent of any US source income, and whether any members are US tax exempt or treaty qualified should be considered carefully and detailed tax advice taken for individual circumstances.

18. Foreign Account Tax Compliance Act (FATCA)

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FATCA requires financial institutions outside the USA to report information on financial accounts held by their US customers to the Internal Revenue Service (IRS). The information to be reported by foreign financial institutions is equivalent to that required to be reported by US citizens in their tax returns.

If financial institutions do not comply with the US regulations, a withholding tax is imposed on US source income of that financial institution. Financial institutions can also be required to close accounts where their US customers do not provide the information that has to be collected.

On 13 December 2013, Jersey and the US signed an agreement to improve international tax compliance and to implement FATCA. As a result, the withholding tax and account closure requirements will not apply, apart from in circumstances of unresolved significant non-compliance.

Under the terms of the agreement, financial institutions will provide the Jersey Taxes Office with the required information which is then forwarded to the competent authority in the US.

19. Economic substance

As noted above, the Taxation (Companies – Economic Substance) (Jersey) Law 2019 has been extended to LLCs in a similar manner as the existing rules applied Jersey to companies.

As a result, Jersey LLCs that are tax resident in Jersey and undertake relevant activities in respect of financial periods commencing on or after 1 January 2019 will have to demonstrate that they have adequate substance in Jersey by being directed and managed in Jersey, having adequate people, premises and expenditure in Jersey and conducting core income-generating activities in Jersey.[10]

20. Annual filings

Jersey LLCs are subject to the requirements of the Disclosure Law and will be required to provide to the JFSC information on the beneficial owners and the significant persons (managers or managing members) and to give notification of any changes to that information within 21 days. This information will not be publicly available.

The nominated person of the LLC will be required to submit an annual confirmation statement to confirm this information as well as the registered office address.

The Registrar has power to strike off a Jersey LLC which does not submit its annual confirmation statement or comply with the other requirements of the Disclosure Law.

A manager, managing member, nominated person or the Attorney General, can apply to Court to have the LLC reinstated up to 10 years after dissolution or strike off.

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21. Mergers and continuance

An Jersey LLC can merge with another LLC or certain other types of Jersey and non-Jersey companies.

Limited liability companies from other countries can migrate or "continue in" to Jersey, subject to certain conditions being met under the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022.

Jersey LLCs can also migrate or "continue out" of the jurisdiction and continue in another country, provided certain conditions are met and they have consent from the JFSC.

22. Sources

Primary law:

- **Limited Liability Companies (Jersey) Law 2018**

Subordinate legislation:

- **Limited Liability Companies (Winding Up And Dissolution) (Jersey) Regulations 2022**
  - Deals with winding up, creditors winding up, undervalue/preferences, liquidators.
- **Limited Liability Companies (General Provisions) (Jersey) Regulations 2022**
  - Deals with accounts, audit, prospectuses, mergers/demergers, continuance.

1 See https://www.jerseyfsc.org/industry/guidance-and-policy/jersey-private-fund-guide/.

2 Subject to the terms of the JFSC's Sound Business Practice Policy and Registry Processing statement.

3 https://www.jerseyfsc.org/registry/register-or-make-a-change/register-a-limited-liability-company/

4 It will be a condition of the consent to be granted by the JFSC under Article 11A of the Control of Borrowing (Jersey) Order 1958 (COBO) upon the establishment of each LLC that the LLC agreement be in writing. COBO conditions apply on an ongoing basis.

5 Although if a manager of an LLC carries out that function "by way of business", they may be required to be registered under the FSJ Law to carry on TCB. There are available regulatory exemptions that a manager may

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be able to rely upon. Other service providers who provide services to LLCs should also be aware of the required classes of TCB required under the FSJ Law.

6 Members/managers must have capacity and be 18 or over. A separate limited partnership, incorporated limited partnership or limited liability partnership cannot be a manager.

7 This is the same as the proportion of the profits of the LLC to which the member is entitled in accordance with Article 31 of the Limited Liability Companies (Jersey) Law 2018.

8 Probate stamp duty is charged on a deceased person's Jersey moveable estate with a value of more than £10,000 up to 0.75% (capped at GBP 100,000).

9 www.gov.je/taxesmoney/gst/businesses/lawregulationdirection/pages/entitieseligibleiselisting.aspx

10 See also powers of the Court under articles 103/104 of the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022 where a limited liability company has not met the economic substance test. Further details on the economic substance rules in Jersey can be found at: https://www.collascrill.com/knowledge/jersey/corporate-advisory/all-types/Lets%20talk%20about%20Jersey%20economic%20substance/

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