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Jersey Limited Liability Companies: Further groundwork laid ahead of launch

MAY 2020

In September 2018, Jersey adopted the Limited Liability Companies (Jersey) Law 2018 (the **LLC Law**) which will allow, once further enabling legislation has been passed, for the establishment of limited liability companies (**Jersey LLCs**).

The introduction of this product into the Jersey legislative framework will enable Jersey to diversify from its current markets and, in particular, to promote Jersey plc to the US market. The characteristics of the Jersey LLC are known to, and much used by, US investors and while inherently based on the Delaware model, recognise and reflect the highest standards of regulatory framework and corporate governance for which Jersey as an international finance centre is universally known.

What is a Jersey LLC?

A Jersey LLC is a hybrid of a company and a partnership, and will include the following features:

- it will have a separate legal personality without being a body corporate;
- it will provide limited liability for its members;
- the LLC agreement will govern the terms of the agreement between the members and manager but will not be a matter of public record;
- it will be possible for the LLC to be managed by appointed individuals or for the management of the LLC to be retained by its members;
- it will have the ability to create segregated series, each of which would have its own assets and liabilities and could have different members and/or managers from the other series.

Amendments

The States of Jersey continues to ensure that the legislative framework will make Jersey LLCs as attractive as possible, ahead of the enabling legislation being brought in.

The States of Jersey has just voted to approve certain amendments to the LLC Law to provide (subject to Privy Council approval in due course) that:

- the duties of the manager of a Jersey LLC be brought in line with those other jurisdictions such as Delaware and Cayman who offer the limited liability company;

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A manager will not owe any duty to the Jersey 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. A breach of that duty may, subject to the LLC agreement, be authorised or ratified provided that the Jersey LLC is cashflow solvent after the act or omission which constituted such a breach.

- an LLC agreement may confer rights on a third party;

An LLC agreement will be able to provide for rights being owed to a third party (who can enforce those rights) and the manner in which those rights may be varied or extinguished. If the LLC agreement does not provide, the LLC Law will provide that the consent of that third party will be required to vary or terminate those 'third party' rights. This is an interesting development given Jersey law generally retains the concept of privity of contract unlike, for example English law, which has the benefit of the Contracts (Rights of Third Parties) Act 1999. Such an amendment may be of particular interest to lenders to Jersey LLCs, who could potentially 'hard-wire' protections into LLC agreements.

- Jersey customary law principles relating to partnerships are disapplied in respect of Jersey LLCs;

It was recognised that these principles would not be familiar to the target market for the Jersey LLC such as international investors and, given the hybrid nature of Jersey LLCs, it would be wrong to focus solely on principles of partnerships, thereby allowing consideration to be given a broader range of sources including interpretation of LLC legislation in other applicable jurisdictions.

Conclusion

These amendments to the LLC Law reflect the ongoing commitment in Jersey to lay important groundwork, ahead of the formal launch of the Jersey LLC. This groundwork will help ensure that the LLC legislative framework is consistent and robust, and that the management, operation and administration of the Jersey LLC will be familiar both to US investors and others who use similar vehicles in the structuring of investments and transactions, while bringing continued benefits offered by Jersey as an international finance centre.

How can we help

Collas Crill's Corporate, Finance & Funds team has many years of experience assisting clients on corporate structures and can advise on how the use of Jersey entities may provide the optimal structure for your transactions.

About Collas Crill

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

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