



The Entrepreneurial Advantages of the Bermuda LLC

After decades of being the favoured corporate structure in the United States, on 1 October 2016, the Government of Bermuda introduced the Limited Liability Company (LLC) to Bermuda through the Limited Liability Company Act 2016 (**Act**). The LLC is a unique combination of a company and a partnership, which affords its members an increased amount of flexibility in formation, corporate governance and operation of its business. While there are many variations of the LLC, the most notable attributes of a Bermuda-based LLC include:

1. **Ease of Registration** – The application process for forming an LLC has the same level of ease as the formation of a Bermuda company. A Certificate of Formation is filed with the Registrar of Companies, rather than a Memorandum of Association. The underlying LLC agreement, which governs the LLC, can be formed and effected at a later date. This provides entrepreneurs a timely option to incorporate while they are still finalising their business structure.
2. **Affordability** – Similar to a company incorporated in Bermuda, the registration and annual fees are based on issued capital interests. The amount of legal fees associated with forming an LLC will vary depending on the complexity of the LLC agreement. Together, these factors make the LLC accessible and attractive to all sizes of firms looking to capitalise on the LLC structure.
3. **Independent Body Corporate** – Although the LLC operates like a general partnership, an LLC is a separate legal entity and is formed and taxed separately and apart of its member or members. Unless otherwise established in the LLC agreement, this provides entrepreneurs with the same limited liability they would enjoy in a corporation simultaneously providing more flexibility in terms of the operation and management of the business.
4. **Operation of Business in Bermuda** – For all intents and purposes, Bermuda institutions treat LLCs like companies, including when obtaining business licenses, opening bank accounts, licensing vehicles or equipment, or establishing third-party financing. This helps to separate personal finances from business finances during the early stages of the LLC formation. Keeping personal and business finances separate is crucial to ensure protection of an entrepreneur's personal assets.
5. **Limited Fiduciary Duty** – By way of an LLC agreement, an LLC can limit, and even eliminate its members' or managers' fiduciary duties. There is a codified duty to act in good faith, which can also be expanded or restricted through the LLC agreement. Additionally, unless stipulated in the LLC

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agreement, members may exercise a vote in his or her best interest, rather than the best interests of the LLC. However, at no time can an LLC agreement permit dishonesty or fraudulent behaviour.

6. **Conversion and Continuation** – The Act enables companies, limited liability partnership and LLCs to convert to or amalgamate with LLCs, whether they are exempt or local. This enables existing companies to switch to a more favourable arrangement without recreating their corporate identity. This is particularly attractive to US entities incorporated in Bermuda who are seeking a familiar corporate structure.
7. **Similar Residency Requirements** – The LLC has the same residency requirements as a company in Bermuda. As such, a local or foreign company (as defined in the Companies Act 1981, as amended) may form or continue as a local or foreign LLC. There are no new residency requirements surrounding an LLC.
8. **Confidentiality** - While registration at the Registrar of Companies is required to form an LLC, the underlying and governing LLC agreement and a list of the members need not be disclosed to a public registrar. This allows members and managers to operate in an environment of independence. However, some information is made public through the Registrar of Companies, including, (i) licenses granted by the Minister, (ii) the register of managers, (iii) continuation, discontinuation, and business combination documentation, and (iv) the register of charges against the LLC.
9. **Less Onerous Maintenance** – As mentioned above, the LLC agreement provides ample flexibility in relation to, among other things, corporate governance, profit and loss allocation, creation and distribution of LLC interests, and assignment of manager or member voting rights. Furthermore, there are no requirements surrounding accounting, auditors, or annual general meetings. Once the LLC is formed, there is very little need for continuous maintenance. The freedom from certain corporate governance formalities enables entrepreneurs to focus on raising capital and growing their business.
10. **Ease of Transfer of Interests** - The flexible formation of an LLC allows entrepreneurs to establish a less onerous process to transfer interests or allot profits to members in the LLC, which is cost efficient and attractive to potential investors or members. The LLC agreement can significantly simplify the process for adding and removing members and transferring interests.

Entrepreneurial Appeal of LLCs

The LLC is particularly accommodating to start-up companies across a wide array of industries, including, among others, technology, film and music, retail, manufacturing, and distribution. The abundance of flexibility enables entrepreneurs to design a corporate structure that is simple, efficient, economic and above all – protects their personal assets. The simplicity of the LLC lends itself particularly to project-based starts-ups because one can utilise the same structure to form a new LLC for each project. This empowers an entrepreneur to track the



investment and assets of each project, without being overwhelmed with corporate governance issues or high legal fees. Maintaining separate LLCs is also crucial for tracking business growth to accommodate investors, financial institutions or potential purchasers of assets held by the LLC. LLCs are also suitable for a group of members who wish to pool resources to create and finance projects and share in the generated wealth. Furthermore, the LLC allows its members to establish clear roles of the involved individuals, rather than being confined to directors, shareholders or officers. The amount of control afforded to an entrepreneur is what makes the LLC such an appealing corporate structure as one strives to form a solid foundation on which to grow their business.

Notwithstanding all of its strengths, the LLC it is not appropriate for all businesses. As a business advances, so do the complexities of corporate governance. The amount of flexibility afforded to an LLC can create uncertainty and trepidation with external third parties and markets. Despite the increase of LLCs, venture capitalists and listing exchanges are slowly adapting and accepting the malleable LLC structure. Consequently, a poorly-prepared LLC agreement can be fatal to the growth of a business. An LLC agreement must be prepared with the utmost care and consideration for the development of the business. It is crucial to seek sound legal counsel regarding which structure is appropriate for your business and ensure it is duly formed and in compliance with Bermuda law on a go forward basis.

This article is intended for informational purposes only and is not a substitute for legal advice.

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