

STATES OF JERSEY



DRAFT LIMITED LIABILITY COMPANIES (JERSEY) LAW 201- (P.85/2018): COMMENTS

Presented to the States on 3rd September 2018
by the Economic Affairs Scrutiny Panel

STATES GREFFE

COMMENTS

Background

The Draft Limited Liability Companies (Jersey) Law 201- ([P.85/2018](#)) (the “draft Law”) was lodged on 21st May 2018 by the then Chief Minister. The draft Law was originally due to be debated earlier, however, following concerns raised by the Panel about the limited time to look at the draft Law, the Chief Minister agreed to defer the debate until 11th September.

The Financial Services Unit had briefed the previous Economic Affairs Panel in October 2017 just before the [consultation](#) was launched by the Chief Minister’s Department. The consultation ran from November 2017 to January 2018 and the responses were collated into a [report](#) which was published shortly after. The Unit subsequently briefed the current Panel on 5th July.

The Draft Law

The draft Law provides for the establishment of limited liability companies (LLC) in Jersey. LLCs are most commonly associated with the United States (US). During the Panel’s briefing session, Officers explained that LLCs combine the limited liability protection of a company with the constitutional flexibility and privacy of a partnership, whilst enabling a choice between the management structures and tax treatment of both.

Recently, more jurisdictions have provided for the creation of LLCs including the Cayman Islands, Bermuda and the Isle of Man.

Why introduce LLCs?

P.85/2018 explains that the appeal of the US LLC is due to its flexibility with it being used in a diverse range of roles. It is anticipated that the introduction of a Jersey LLC will give prospective US businesses and investors the option of using a flexible entity that they are familiar with and thereby provide Jersey with a competitive advantage in attracting business to the Island¹.

During the Panel’s briefing session, 3 main reasons were given to introduce LLCs:

1. **Consistent with Jersey Finance Services Core Principles (innovation):** Officers explained that the addition of LLCs to Jersey would provide a new corporate tool for the finance industry hence being consistent with the Jersey Financial Services Industry [Policy Framework](#): “...to stand out as an international finance centre, Jersey must excel in the areas that determine investors’ choice of location: namely the legal, regulatory and business environments. These ‘business enablers’ are essential to future success. We will make sure we enhance the governmental, regulatory and legislative framework and do all we can to improve the business environment, allowing innovation to flourish”.

¹ Collas Crill Factsheet - Jersey’s new LLP and LLC Laws - website at: <https://www.collascrill.com/documents/factsheets/funds-jerseys-new-llp-and-llc-laws/>

2. **Transparent vehicle for Jersey purposes (post-BEPS):** The consultation document explained that the Jersey LLC would be a transparent entity for tax purposes i.e. the profits would be allocated to the members of the LLC who would be required to pay income tax in the jurisdiction in which they are tax resident. The Panel notes that in 2017 the then Chief Minister signed a multilateral convention to implement tax treaty related measures designed to prevent base erosion and profit shifting (BEPS). As a result, existing bilateral tax agreements were made BEPS-compliant, allowing Jersey to strengthen its tax treaty network in an efficient and comprehensive manner, without the need for bilateral negotiations².
3. **“Fast follower” (Cayman Islands, Bermuda) i.e. imitating the innovations of competitors:** The Cayman Islands, one of Jersey’s main competitors in terms of international finance, introduced the establishment of LLCs in 2016. The Panel accepts that it would be natural for Jersey to also propose LLCs in order to create a level playing field to attract US (and equivalent European) business.

Conclusion

Overall, the Panel supports the adoption of this draft Law. The Panel agreed that a future review might examine the reputational impact and how effective the Law had been in attracting US (and equivalent European) business to Jersey. Therefore the Panel will consider it for a review in the future, should it be approved by the States Assembly.

² Jersey signs OECD Multilateral Convention on the prevention of base erosion and profit shifting (BEPS) <https://www.gov.je/News/2017/Pages/JerseySignsOECDConvention.aspx>