

The Marshall Islands LLC - a comparison

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The Marshall Islands Limited Liability Company (LLC), which derives from the concept of the Delaware LLC, is a business entity, which provides the flexibility of partnership and private contract law along with the corporate benefits of limited liability for its members.

An LLC enables its member(s) to conduct business without fear of personal liability while avoiding the corporate governance restrictions of traditional corporations. There are no requirements to conduct board of directors or shareholder meetings, issue shares, meet minimum capitalisation requirements or maintain the corporate formalities necessary for operating an international business corporation (IBC).

A Certificate of Formation establishes the LLC and the entity then functions through the terms of its Operating Agreement, which essentially plays the same role as a partnership agreement in a general or limited partnership. Additionally, the Marshall Islands LLC Act allows alternative LLC structures, such as Marshall Islands "Series LLCs," which create wonderful opportunities for clients to enjoy the benefits of even greater flexibility and liability protection than one can find in other jurisdictions.

LLCs are a relatively new creation in the international business world, having only seen real growth in numbers and popularity in the past two decades or so since their creation in the United States¹. The structure and liability protection of the LLC represent an ideal combination for anyone interested in operating an international business.

Although many of the characteristics of an LLC will be familiar to attorneys and financial professionals used to dealing with other business forms in Europe and throughout the world, there are also important differences, which make Marshall Islands LLCs desirable for anyone interested in flexibility and liability protection.

Structure and liability protection of an LLC

Members: The LLC may be conveniently employed using the types of parent-subsidiary arrangements inherent in large corporations because any type of entity may be a member of an LLC. In addition, the names of members are not disclosed in the LLC Certificate of Formation, thereby preserving confidentiality.

The attributes of members vary according to the management structure utilised by the LLC; members in one LLC may be similar to partners, while in another, they may be more like shareholders. For example, if the management is vested equally in the members, then they take on the characteristics of partners. If management is vested in select members, most of the members have attributes of limited partners. If management is vested in outside managers, however, members possess shareholder-like qualities.

Management: Members in an LLC are not required to participate in the management of the entity; instead, they may designate "managers" (who may or may not also be members) to manage the affairs of the LLC. Members may also actively participate in management without the fear of liability exposure. Flexible

management makes the LLC an excellent vehicle for transactions requiring a considerable degree of passive investment, such as venture capital projects, investments in real estate, oil or technology, as well as research and development businesses.

Liability: Like shareholders in a corporation, the members of an LLC are protected from personal liability in excess of their capital investment. As with partners in a partnership, members of an LLC can flexibly allocate management responsibilities, gains and losses. The LLC also allows members to contribute passively as in the limited partnership. Unlike the limited partnership, however, where the general partner remains personally liable in the event of a business loss, the LLC allows all members to contribute without risking personal liability.

Comparison to other business forms world-wide

Although the LLC is an American style business entity, some scholars believe that the concept of the LLC arose from the Panamanian entities, known as *limitadas*. In fact, in the US, some state legislatures were reportedly pressured to pass LLC legislation partly because of the desire to make US businesses more competitive with these Panamanian *limitadas*. However, Panamanian *limitadas* have always been subject to more statutory requirements than LLCs, so it is not clear how much of an influence the *limitadas* had in the creation of the various state LLC Acts.

Another historical source for LLCs are the various European business forms that provide limited liability. Some notable examples of European entities, which share some similar characteristics to the LLC,

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are the SARL (Société à Responsabilité Limitée in Francophone countries), as found throughout Europe and elsewhere, and the German GmbH (Gesellschaft mit beschränkter Haftung) and GmbH & Co. KG. However, there are still important and substantial differences, which exist between LLCs and these European entities.

Comparison to European business structures

LLCs and their European counterparts (SARLs, GmbH's, etc.) provide limited liability for their owners without most of the restrictions of the large corporate entities, such as the SA (Société Anonyme in France) and the German AG (Aktien Gesellschaft). Most of these entities were originally based on contract and partnership principles, although the trend of an ever-increasing number of restrictive European regulations is widening the gap between LLCs and these European structures and pushing European business entities away from these contract and partnership principles towards more traditional corporate principles.

Another European entity that many consider similar to the LLC is the United Kingdom Limited Liability Partnership (UK LLP). Such LLPs possess some of the most desirable LLC characteristics, such as flexibility in the management and operations of the entity as well as limited liability for the partners. However, UK LLPs are still subject to many sections and provisions of the UK Companies Act and other regulations, which add both to the operating costs of the typical LLP and to an erosion of the confidentiality many clients seek.

Despite similar origins of the LLC and some European business forms, there is no European structure that can truly reflect the advantages and protections that an LLC, especially a Marshall Islands LLC, can offer.

Advantages of a Marshall Islands LLC

Marshall Islands LLCs do not have any minimum capitalisation requirements, unlike many European entities, such as the GmbH. Additionally, Marshall Islands LLCs do not require the disclosure of members, managers, terms of the operating agreements, etc., whereas European entities generally require far more disclosure (although still much less than publicly traded

European companies). LLCs are essentially free from traditional corporate governance restrictions because they are based in private contract. Therefore, start-up companies or other closely-held entities do not experience the concerns of high operational and legal costs if they choose to function as an LLC.

Moreover, many European entities, such as the SARL or EURL (Enterprise Unipersonnelle à Responsabilité Limitée) restrict the ownership of such entities to limited numbers of individuals or to particular classes of individuals, such as family members only, in order to enjoy all of the possible benefits. There are no such restrictions that pertain to Marshall Islands LLCs.

Marshall Islands Series LLC

Another valuable aspect of the Marshall Islands LLC Act is the opportunity to create a "Series LLC" (SLLC). This type of entity, based on the Delaware SLLC, is one company (an LLC) that contains separate series/units, which are each fully operational and capable of doing business independently. Each individual unit of a Marshall Islands SLLC can own separate assets, have different members and/or managers, and, most importantly, be fully and individually isolated from the liability exposure of the other units. In other words, a client can have the benefits of multiple LLCs, all with different assets, risk portfolios, etc., but with the convenience and confidentiality that one would expect from forming one LLC. One can favourably compare a Marshall Islands SLLC with other unit-structured entities, such as "protected cell companies" (PCCs), because the SLLC offers the strong, isolated liability protections without the restrictive governance concerns of corporate entities like PCCs.

Conclusion

A Marshall Islands LLC provides the best of all worlds. Clients can experience the liability protection of a corporation and the flexible management structure of a partnership, all in a tax-free, confidential environment. The Marshall Islands maintains very modern business laws and provides various structures, such as the SLLC, that allow for flexibility, convenience,

liability protection and meeting the growing needs of clientele worldwide.

Formation of LLCs in the Marshall Islands is also a quick and efficient process. International Registries, Inc. (IRI) and its group of affiliated companies, which administer the Corporate and Maritime Registry for the Republic of the Marshall Islands, embarked in 2000 on an ambitious plan to decentralise the Corporate and Maritime Registry. Decentralisation enables clients to form LLCs in their own countries and time zones.

Each IRI office, Zurich, London, Piraeus, Hong Kong, Singapore, New York, Ft. Lauderdale and Reston/Washington, DC, can form LLCs and corporations the same day that it receives the instructions or filings. Furthermore, each office can apostille filed documents free of charge, reserve LLC names, issue Certificates of Goodstanding, and accept discretionary filings. With any formation or filing, clients receive the final documentation within one to two business days.

In a little over ten years, the Republic of the Marshall Islands has developed a modern corporate program in a politically stable environment. IRI and its affiliates are proud of the excellent service they provide to the international business community and look forward to continuing to be in the forefront of the administration and formation of international business entities.

www.register-iri.com

Archive link: "Making all the right moves - Marshall Island responds to market changes" - September 2000, Issue 109

ENDNOTE

1 *There is some dispute about the precise origins of the LLC, but the LLC began to quickly develop in the US in the late 1970s and early 1980s. A few US states adopted LLC Acts in the 1980s and LLCs finally gained wide acceptance when the US Internal Revenue Service (IRS) agreed to treat LLCs as partnerships for taxation purposes in 1988. This meant that members of LLCs were permitted to enjoy direct "pass-through" taxation, as opposed to the double taxation experienced by corporate shareholders.*