

STATES OF JERSEY



Jersey

DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 22nd December 2022
by the Minister for External Relations and Financial Services
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STATES GREFFE

REPORT

Background and purpose

The Draft Regulations propose amendments to the [Limited Liability Companies \(Jersey\) Law 2018](#) (the “LLC Law”) to permit a one-time irrevocable at the time of registration of a limited liability company (“LLC”) that it be a body corporate. Under the current LLC Law, a limited liability company has separate legal personality but is specifically not a body corporate.

It is considered that the amendment will increase the appeal of the Jersey LLC by virtue of the choice of form at the time of registration. Currently no other jurisdiction affords such flexibility in the form that an LLC takes. The target market for the Jersey LLC is primarily US fund managers who will be attracted to the familiar LLC form to structure offshore components of fund arrangements along lines that parallel onshore structures using, for example, the Delaware LLC.

Industry noted that the absence of a body corporate LLC option would potentially limit the Jersey LLC’s utility because it would fall outside certain UK regulatory exemptions available only to a body corporate. The introduction of the amendments allowing for the one-time, irrevocable election of the body corporate form will thus maximise the flexibility of the Jersey LLC offering, creating a competitive advantage with respect to similar offerings from other jurisdictions.

Current position

On 1st September 2022, the LLC Law came into force as amended by the Limited Liability Companies (Amendment) (Jersey) Law 2020 and the Limited Liability Companies (Amendment No. 2) (Jersey) Law 2022.

Under the LLC Law, a limited liability company registered would have separate legal personality but would not be a body corporate.

The Limited Liability Companies (Amendment No. 2) (Jersey) Law 2022 added Article 2A to the LLC Law, granting the States Assembly the authority to amend the LLC Law by Regulations permitting the registration of an LLC as a body corporate.

Rationale and benefits of offering a body corporate limited liability company option

In drafting the current LLC Law, Jersey sought to differentiate itself from the Cayman LLC offering. The Cayman LLC Law specifically states that a Cayman LLC is a body corporate. The Jersey LLC in contrast specifies that LLCs are not bodies corporate. Since the initial drafting, however, it has been recognised that specifying that a Jersey LLC is not a body corporate could prove problematic in a US context, where the concept of an entity having a separate legal personality but which is not a corporation is absent in US law. LLCs registered or formed in US states such as Delaware and Wyoming comprise a unique business category, being neither corporations nor partnerships, instead having aspects of both. As a result, the nomenclature of ‘separate legal personality’ and ‘body corporate’ does not map easily onto the LLC laws of various US states.

Furthermore, because the non-body corporate approach of the current Jersey LLC law is different from that adopted by the Cayman Islands for their LLC offering, this would pose potential problems for the conversion of a Cayman LLC to a Jersey LLC.

For these reasons, it was determined that it would be helpful to offer an election at the time of registration for the Jersey LLC to be either a non-body corporate or a body

corporate. A key driver for establishing a Jersey LLC in the first instance was its familiarity to practitioners in the international arena. It is for this reason that providing the option of registering a Jersey LLC as a body corporate is now seen as useful where such a distinction is important, giving practitioners the unique flexibility to determine which form best suits their purposes.

Revenue Jersey's view is that nothing in domestic tax treatment hangs on the phrase being used, and that for Jersey tax purposes, both non-body corporate and body corporate LLCs will receive identical treatment.

The JFSC will limit registration of a body corporate LLC to those business use cases where the majority of the body corporate LLC's activity will occur outside Jersey and is limited to sophisticated investors and institutions. As such, the body corporate LLC will not be available to local Jersey businesses in order to prevent 'regulatory arbitrage' by registrants between the Jersey body corporate LLC and the Jersey Company. Accordingly, the amendment will have little or no impact on Jersey residents.

While Article 12 of the LLC Law (series of members, managers, LLC interests or assets) will be amended to remove the exclusion of a body corporate LLC, the ability to register such series will be suspended until such time as the JFSC Registry has analysed the potential implications for the Registry of permitting such series.

The proposed draft regulations approved by the LLC Working Group make only such changes as are strictly necessary to allow for the registration of a limited liability company as a body corporate.

Conclusion

The amendments seek to ensure that Jersey continues to distinguish itself in the international arena by offering products that afford flexibility to international practitioners. The amendment of the LLC Law to include the option to register a limited liability company as a body corporate will serve to maintain and enhance Jersey's ability to attract international business of high quality.

Consultation

A Consultation Paper seeking comment on the proposed amendments was prepared by Government and circulated by Jersey Finance Limited amongst its membership on 21st November. The consultation remained open until 1st December 2022. In addition, an online virtual 'town hall' consultation was organised by Jersey Finance Limited on 24th November 2022.

No comments, adverse or otherwise, were received during the virtual 'town hall' event, nor were any responses received by the consultation closing date of 1st December 2022. As noted above, the Working Group supports these amendments.

Financial and/or manpower implications

There are no new financial and/or manpower implications.

EXPLANATORY NOTE

The Limited Liability Companies (Amendment) (Jersey) Regulations 202- amend the Limited Liability Companies (Jersey) Law 2018 (“the LLC Law”). The Regulations are made under Articles 2A and 60(2)(k) of the LLC Law and provide for the registration of a limited liability company (an “LLC”) that is a body corporate. The Regulations also make consequential amendments to various other pieces of legislation.

Part 1 (Regulations 1 to 11) amends the LLC Law.

Regulation 4(b) removes the rule in Article 2(2) of the LLC Law that an LLC must not be a body corporate.

Regulation 6(a) inserts a new paragraph (2)(aa) into Article 4 of the LLC Law so that the declaration form accompanying an application for registration of an LLC must state whether the LLC is to be a body corporate or an unincorporated body.

Regulation 6(c)(ii) amends Article 4(6) of the LLC Law so that the certificate of registration must state whether the LLC is a body corporate or an unincorporated body.

Regulation 10(a) removes the rule in Article 12(1) of the LLC Law (which is not yet in force) that a series of members, managers, LLC interests or assets must not be a body corporate.

There are also a number of amendments which change references to a “certificate of formation” to a “certificate of registration”.

Part 2 (Regulations 12 to 31) contains consequential amendments to various pieces of legislation to ensure that the legal treatment of LLCs that are bodies corporate is broadly the same as for LLCs that are unincorporated bodies.

Part 3 (Regulation 32) gives the citation and provides that the Regulations come into force 7 days after they are made.



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Jersey

DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Articles 2A and 60(2)(k) of the [Limited Liability Companies \(Jersey\) Law 2018](#) –

PART 1

LIMITED LIABILITY COMPANIES (JERSEY) LAW 2018 AMENDED

1 Limited Liability Companies (Jersey) Law 2018 amended

This Part amends the [Limited Liability Companies \(Jersey\) Law 2018](#).

2 Article 1 (interpretation) amended

In Article 1(1) for the definition “certificate of formation” there is substituted –

“ “certificate of registration” means the certificate of registration issued under Article 4(5);”.

3 Part 2 heading amended

In the heading of Part 2 “FORMATION,” is deleted.

4 Article 2 (limited liability company) amended

In Article 2 –

- (a) in paragraph (1), for “formed” there is substituted “registered”;
- (b) in paragraph (2), the words “but is not a body corporate” are deleted.

5 Article 3 (LLC agreement generally) amended

In Article 3 –

- (a) in paragraph (1), for “certificate of formation” there is substituted “certificate of registration”;

- (b) in paragraph (2) “and formed” is deleted.

6 Article 4 (registration of limited liability company) amended

In Article 4 –

- (a) after paragraph (2)(a) there is inserted –
 - “(aa) whether the limited liability company is to be a body corporate or an unincorporated body;”;
- (b) in paragraph (5), for “certificate of formation” there is substituted “certificate of registration”;
- (c) in paragraph (6) –
 - (i) for “certificate of formation”, in both places it occurs, there is substituted “certificate of registration”,
 - (ii) after sub-paragraph (b) there is inserted –
 - “(c) whether the limited liability company is a body corporate or an unincorporated body;”;
- (d) in paragraph (7) –
 - (i) in the opening words, for “certificate of formation” there is substituted “certificate of registration”,
 - (ii) in sub-paragraph (b), for “formed” there is substituted “registered”,
 - (iii) in sub-paragraph (c), for “law” there is substituted “Law”.
- (e) in paragraph (8) –
 - (i) the words “and thereby its formation” are deleted,
 - (ii) for “certificate of formation” there is substituted “certificate of registration”.

7 Article 5 (amendment of declaration) amended

In Article 5(4), for “certificate of formation”, in each place it occurs, there is substituted “certificate of registration”.

8 Article 7 (name of limited liability company) amended

In Article 7 –

- (a) in paragraph (8), for “certificate of formation” there is substituted “certificate of registration”;
- (b) in paragraph (10), for “certificate of formation” there is substituted “certificate of registration”.

9 Article 8 (registered office) amended

In Article 8(6)(d), for “certificate of formation” there is substituted “certificate of registration”.

10 Article 12 (series of members, managers, LLC interests or assets) amended

In Article 12 –

- (a) in paragraph (1), the words “but shall not be a body corporate” are deleted;
- (b) in paragraph (2)(d), for “formation”, in both places it occurs, there is substituted “registration”;
- (c) in paragraph (2)(e), after “limited liability” there is inserted “company”;
- (d) in paragraph (2)(f), for “the assets and liabilities of” there is substituted “an LLC interest in”;
- (e) in paragraph (8), for “formation” there is substituted “registration”.

11 Article 13 (admission of members and LLC interests) amended

In Article 13 –

- (a) in paragraph (1) –
 - (i) in the opening words, for “formation” there is substituted “registration”,
 - (ii) in paragraph (1)(a), for “certificate of formation” there is substituted “certificate of registration”;
- (b) in paragraph (2), for “formation” there is substituted “registration”.

PART 2**CONSEQUENTIAL AMENDMENTS****12 [Alternative Investment Funds \(Jersey\) Regulations 2012](#) amended**

In Regulation 2 (interpretation) –

- (a) in the definition “company”, after “incorporated” there is inserted “(other than a limited liability company registered as a body corporate)”;
- (b) in the definition “holding company”, in paragraph (a), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate)”;
- (c) in the definition “subsidiary”, in paragraph (a), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate)”.

13 [Banking Business \(Jersey\) Law 1991](#) amended

(1) In Article 1 (interpretation) –

- (a) in the definition “associate”, after “a body corporate” there is inserted “(other than a limited liability company registered as a body

- corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#)”;
- (b) in the definition “company”, after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”;
- (c) in the definition “institution”, after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.
- (2) In Article 4(6) (meaning of “holding company”, “subsidiary company” and “wholly owned subsidiary”), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.
- (3) In Article 28(2) (investigations on behalf of the Commission), after “any body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

14 [Collective Investment Funds \(Jersey\) Law 1988](#) amended

In Article 1(1) (interpretation), in the definition “company”, after “incorporated” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

15 [Collective Investment Funds \(Restriction of Scope\) \(Jersey\) Order 2000](#) amended

In Article 1 (interpretation), in the definition “relevant consent”, in paragraph (a), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

16 [Companies \(Jersey\) Law 1991](#) amended

In Article 1(2) (interpretation), after sub-paragraph (e) there is inserted –

- “f) do not include a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#).”.

17 [Companies \(Takeovers and Mergers Panel\) \(Jersey\) Law 2009](#) amended

In Article 1(1) (interpretation), in the definition “company”, after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

18 [Competition \(Jersey\) Law 2005](#) amended

In Article 1 (general interpretation), in the definition “company”, after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

19 [Control of Borrowing \(Jersey\) Law 1947](#) amended

In Article 1 (interpretation), after paragraph (7) there is inserted –

“(8) In this Law, references to a body corporate do not include a limited liability company registered as a body corporate.”.

20 [Control of Borrowing \(Jersey\) Order 1958](#) amended

(1) In Article 2 (admission to membership of Jersey body corporate), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate)”.

(2) In Article 4 (issue of securities other than shares), after paragraph (3) there is inserted –

“(4) This Article does not apply to a limited liability company registered as a body corporate.”.

(3) In Article 6 (grant of options to employees), in paragraph 2(a), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate)”.

21 [Control of Housing and Work \(Exemptions\) \(Jersey\) Order 2013](#) amended

In Article 1 (interpretation), in the definition “company”, after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

22 [Electronic Communications \(Jersey\) Law 2000](#) amended

In Article 1(1) (interpretation), in the definition “company”, after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

23 [Financial Services \(Jersey\) Law 1998](#) amended

(1) In Article 1(1) (general interpretation) –

(a) in the definition “company”, after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the LLC Law)”;

(b) in the definition “subsidiary”, in paragraph (a), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the LLC Law)”.

(2) In Article 2 (“financial service business” defined) –

- (a) in paragraph (4)(a), for “limited liability company formation agent” there is substituted “limited liability company registration agent”;
 - (b) in paragraph (6), for “limited liability company formation agent” there is substituted “limited liability company registration agent”.
- (3) In Article 39D (meaning of “having information as an insider”), in paragraph (2)(a)(i), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the LLC Law)”.
- (4) In Schedule 1 (investments), in the note to paragraph 1 (shares, etc.), after “1988” there is inserted “or a limited liability company registered as a body corporate under the LLC Law)”.

24 [Financial Services \(Financial Service Business\) \(Jersey\) Order 2009](#) amended

In Part 2 (trust company business) of the Schedule (classes of financial service business), in Class F –

- (a) “limited liability company,” is deleted;
- (b) after “agent” there is inserted “, or a limited liability company registration agent”.

25 [Financial Services \(Investment Business \(Restricted Investment Business – Exemption\)\) \(Jersey\) Order 2001](#) amended

In Article 3(4) (meaning of “professional investor regulated scheme”), in the definition “relevant consent”, in paragraph (a), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the LLC Law)”.

26 [Financial Services \(Investment Business \(Special Purpose Investment Business – Exemption\)\) \(Jersey\) Order 2001](#) amended

In Article 3(4) (meaning of “special purpose regulated scheme”), in the definition “relevant consent”, in paragraph (a), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate under the LLC Law)”.

27 [Limited Liability Companies \(General Provisions\) \(Jersey\) Regulations 2022](#) amended

- (1) In Regulation 1 (interpretation) –
- (a) in the definition “partnership”, after “body corporate” there is inserted “and a limited liability company”;
 - (b) after paragraph (1) there is inserted –
- “(2) In these Regulations, references to a body corporate do not include a limited liability company registered as a body corporate.”.

- (2) In Regulation 80(5)(a) (registration of notices as to demerger), for “certificate of formation” there is substituted “certificate of registration”.
- (3) In Regulation 87(1) (security for Commission’s expenses under this Part) –
 - (a) in sub-paragraph (a), for “established or formed” there is substituted “registered”;
 - (b) in sub-paragraph (b), for “established or formed” there is substituted “registered”.
- (4) In the Schedule (information to be specified in prospectus), in paragraph 5(b), for “formation” there is substituted “registration”.

28 [Limited Liability Companies \(Winding Up and Dissolution\) \(Jersey\) Regulations 2022](#) amended

In Regulation 39 (duty to co-operate with liquidator) –

- (a) in paragraph (1)(b), for “formation” there is substituted “registration”;
- (b) in paragraph (1)(d), after “body corporate” there is inserted “(other than a limited liability company registered as a body corporate)”;
- (c) in paragraph (2)(a), for “formation” there is substituted “registration”.

29 [Money Laundering \(Jersey\) Order 2008](#) amended

In Article 1(1) (interpretation), in the definition “Jersey body corporate”, after “Jersey” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

30 [Powers of Attorney \(Jersey\) Law 1995](#) amended

In Article 1 (interpretation), after paragraph (2) there is inserted –

- “(3) In this Law, “body corporate” does not include a limited liability company registered as a body corporate.”.

31 [Trusts \(Jersey\) Law 1984](#) amended

In Article 1(1) (interpretation), in the definition “corporation”, after “incorporated” there is inserted “(other than a limited liability company registered as a body corporate under the [Limited Liability Companies \(Jersey\) Law 2018](#))”.

PART 3

CITATION AND COMMENCEMENT

32 Citation and commencement

These Regulations may be cited as the Limited Liability Companies (Amendment) (Jersey) Regulations 202- and come into force 7 days after they are made.