

## **BELIZE:**

### **INTERNATIONAL LIMITED LIABILITY COMPANIES ACT, 2011** **(No. 13 of 2011)**

#### **AN OVERVIEW**

### **INTRODUCTION**

1. Conceptually, a Limited Liability Company or an LLC is a hybrid between two familiar business structures, namely, a corporation and a partnership. An LLC combines the best of both worlds by offering the advantage of both a corporation and a partnership without the disadvantages of either form.
2. A normal corporate structure, while avoiding unlimited personal liability of shareholders, leads to multilevel taxation of the earnings of the corporation as several countries tax corporate income at both the corporate level and the shareholder level (when the income is distributed to the owners of the company). A limited liability partnership avoids multiple taxation but it does require unlimited liability exposure of at least one general partner. Such exposure to risk is too great for an individual to assume and thus limits the usefulness of partnerships.
3. An LLC, on the other hand, has distinct advantages over both a corporation and a partnership in that it not only avoids multiple level taxation, it also limits the liability of its members to the extent of the contributions made by them to the Company. No member of an LLC has personal liability for the debts of the LLC except where there are personal guarantees or other special arrangements. Moreover, LLC members, unless restricted by agreement,

fully participate in the management of the LLC, while limited partners in a limited partnership may not participate in the management of the enterprise without risking the loss of their limited liability status.

4. Legal entities similar to LLC have long existed in civil law jurisdictions, for example, the French *societe responsabilite limtiee* (SARL) and the German *Gesellschaft mit beschrenkter Haftung* (GmbH). In common law jurisdictions, however, they are relatively recent legal phenomena. The first common law jurisdiction to enact LLC legislation was the State of Wyoming in 1977. Since then, most States in the US have enacted some form of LLC law. The LLC has quickly become popular because of the combination of direct management and limited liability characteristics. Under the new United States Internal Revenue Regulations, properly established LLC's are now treated as tax transparent entities for federal tax purposes unless the owners of the LLC specifically opt to be treated as a corporation. This allows the LLC to freely distribute its profits to members without incurring federal corporate tax.
5. Innovative draftsmen in international financial services (or offshore) jurisdictions have further enhanced the benefits of the original US LLC design. Most of the international financial centers (IFCs) have enacted LLC laws to attract US customers.

## **THE BELIZE ACT**

6. The Belize International Limited Liability Companies Act, 2011 (“**the Act**”) is modelled on the Nevis LLC law of 1995 and the Cook Islands LLC Act of 2008. It is designed to give statutory certainty on some of the key issues of

concern to US attorneys using domestic LLCs. The Act introduces several unique asset protection features consistent with the importance of this industry in the international market place. It is an ideal tax planning and asset protection tool and would be a useful addition to Belize's offshore industry infrastructure.

## **SALIENT FEATURES**

7. The Act provides a broad foundation to structure an LLC according to its own rules, rather than being dictated by statute. The operating agreement may contain any provision for the conduct of business that is not contrary to law and relates to the business of the company and the conduct of its affairs.
8. An LLC shall be a legal entity with separate rights and liabilities distinct from its members and managers. No manager, officer, member or employee of an LLC shall be liable for the debts, obligations or liabilities of the LLC unless he has assumed such liability by written contract.
9. The Act contains certain special asset protection features. Like most LLC jurisdictions, a creditor of a member is permitted to apply for a charging order against a member's interest. To the extent so charged, the judgment creditor shall only have the rights of an **assignee** of the member's interest and shall have no right to partake in the management of the company. The Act further provides that the charging order remedy shall be the sole and exclusive remedy available to a judgment creditor or other creditor of a member.
10. The Act provides that only the judgments delivered by a court in Belize shall be enforceable against an LLC or any manager or member thereof. This

would, of course, include judgments rendered in appellate courts not located in Belize but which relate to actions commenced in a court in Belize, e.g., Caribbean Court of Justice (CCJ).

11. An assignee of a member's interest shall in no event have any right to interfere or enquire into the management or administration of the company, or to become a substituted member except as may otherwise be provided in the operating agreement. An assignee shall **only** have the right to receive distributions attributable to a member's interest in the LLC.
12. LLC's from other jurisdictions may transfer their domicile to Belize (Part XI) and Belize LLCs may move to another jurisdiction (Part XII). However, by redomiciliation, LLCs would not be able to escape existing corporate debts. The Act specifically provides that the transfer of domicile of any foreign LLC to Belize or of a Belize LLC to a foreign jurisdiction shall not affect any obligations or liabilities incurred prior to redomiciliation.
13. The Act is confined to **international** LLCs and, as such, only non-residents would be able to form LLCs. There are also restrictions on doing business in Belize.
14. The Act exempts LLCs from taxes, duties and exchange control in Belize except that an instrument relating to a transfer of property situate in Belize, including any shares in a local company, shall not be exempt from stamp duty.
15. The Act contains the usual confidentiality provisions. All proceedings, other than criminal proceedings, relating to LLCs shall be held *in camera* and

information may be divulged only in limited circumstances. There are penalties for unauthorised disclosure.

16. Every LLC shall at all times have a registered agent resident in Belize. Any person licensed by the IFSC to provide company formation and management services would be eligible to act as a registered agent for LLCs.
17. There is no requirement in the Act for an LLC to prepare annual accounts or to appoint an auditor. However, a simple annual return in the form to be specified by Regulations would be lodged with the Registrar setting out the name of the LLC and the address of the registered agent.

## **CONCLUSION**

18. On the whole, the Act provides a comprehensive but not cumbersome framework for the establishment and operation of LLCs. A Belize LLC would be ideally suited for those needing a flexible business entity with strong asset protection features, that can accommodate personal organisational requirements, achieve the least imposition of tax in the jurisdiction where business is conducted, and provide statutory limited liability to the owners. Along with international trusts and international foundations, it will make Belize a jurisdiction of choice as providing a variety of attractive vehicles for tax planning and asset protection purposes.

Office of the International Financial Services Commission of Belize

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