

6.1 Limited Liability Companies (Amendment) Bill 2013 – Clauses considered

The Speaker: The Limited Liability Companies (Amendment) Bill, clauses stage. I call on the mover, Mr Teare.

Mr Teare: Mr Speaker, Hon. Members, this Bill is the Limited Liability Companies (Amendment) Bill 2013.

During the previous reading of the Bill, I hinted at why the changes that this Bill proposes to make might be desirable. As the Bill is extremely short, I will take the opportunity to elaborate on this point.

The limited liability company (LLC) is an American concept, with each state having its own variation of the legislation. At their most basic, LLCs have traditionally been thought of as resembling partnerships with added protection against liability for the members. This is much the same as the protection afforded to the members of any other limited company.

The Isle of Man introduced LLCs in 1996 under the Limited Liability Companies Act 1996. The Act currently requires every LLC to have a minimum of two members. This is consistent with the traditional treatment of LLCs as quasi partnerships.

The tax treatment of LLCs in the Isle of Man is consistent with their close resemblance to partnerships: it is the members themselves who are taxed and not the LLC.

In the USA, a single-member LLC can make the election to be treated as a corporation or do nothing and be treated as a disregarded entity. The latter achieves tax treatment consistent with that of the Isle of Man: it is the member that is taxed and not the LLC.

Subclasses of assets that are either located in the USA or registered in the USA are regulated by the US state and federal authorities. As a general rule, the US authorities require these types of assets to be owned by US citizens. It is common practice for some classes of US assets to be held in single-member LLCs that are disregarded entities for tax purposes.

The amendments proposed in this Bill should enable a US citizen to satisfy the US authorities that the US assets held in a Manx LLC are indeed owned by a US citizen. An example of where this might be used is where goods need to be imported into the European Union.

Most goods imported into the European Union are liable to import tax and duties; however, some may have specific customs relief associated with them – for example, end-use relief, which under specific circumstances reduces the duty rate to 0%.

The EU requirements that must be met in order for a company to take advantage of the special reliefs include that the importing company should be established in the European Union. For these purposes, the Isle of Man meets the definition of being within the EU.

Use of a single-member LLC will go some way towards demonstrating that the company being established in the Isle of Man meets one of the EU's criteria. While it may be insufficient on its own, the use of a Manx corporate vehicle, particularly one that requires the engagement of an appropriate licensed registered agent, will go some way to supporting the requirement for a company to be established in the Island.

There are some basic requirements that must be met to ensure that companies established in the Isle of Man are eligible for the special reliefs and do not fall within the definition of an abusive practice. There is no change to the existing policy and this Bill does not seek to circumvent the existing requirements and conditions for qualification for special reliefs.

This Bill contains four clauses.

When the branches of Tynwald support this Bill, it will come into operation on the day on which Royal Assent to it has been announced at Tynwald by the President of Tynwald.

Mr Speaker, turning to the Bill, clause 1 provides the short title of the Bill. I beg to move that clause 1 do stand part of this Bill.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Mr Teare: Clause 2 sets out the proposed amendments to the Limited Liability Companies Act 1996.

Clause 2(2) replaces the existing words 'a body of persons' with 'a body of one or more persons'.

Clause 2(3) inserts a new clause 1A into the Act. This new clause makes express provision for a limited liability company formed under the Act to have only one member. This clause also expressly applies any existing provisions equally to single-member LLCs and to LLCs with two or more members.

Clause 2(4) amends section 6 to remove the requirement for a limited liability company to be formed with two or more members.

Mr Speaker, I beg to move that clause 2 do stand part of this Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, sir.

Mr Teare: Thank you, sir.

Clause 3 amends the Income Tax Act 1970.

Section 2M of the Act considers the tax treatment of the members of limited liability companies. New sections 2A and 2B will be inserted. These confirm that where an LLC has only one member, that member is liable for taxation on all distributions of profits from the LLC.

Mr Speaker, I beg to move that clause 3 do stand part of this Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

Mr Teare: Thank you, Mr Speaker.

Clause 4 makes provision for the automatic expiry of the resultant Act on the day after the amendments have taken effect. This will not affect any amendments that have been made by the Bill. This is simply a matter of housekeeping.

Mr Speaker, I beg to move that clause 4 do stand part of this Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the motion that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.