

2. Limited Liability Companies (Amendment) Bill 2013 – Second Reading approved

Mr Braidwood to move:

That the Limited Liability Companies (Amendment) Bill 2013 be read a second time.

The President: We turn now to Item 2 on our Order Paper, the Limited Liability Companies (Amendment) Bill 2013. I call on Mr Braidwood to move: Second Reading.

Mr Braidwood: Thank you, Madam President.

Madam President, during the First Reading of the Limited Liability Companies (Amendment) Bill 2013, I hinted at why the changes that this Bill proposes to make might be desirable. I will take the opportunity during the Second Reading to elaborate on this point.

The Limited Liability Company 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 the partnerships. It is the members themselves who are taxed and *not* the LLC.

In the United States of America 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.

Some classes of assets that are either located in the USA or are 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 asset held in a Manx LLC is indeed owned by US citizen. An example where this might be used is where goods need to be imported into the European Union. Most goods imported into the EU are liable to import taxes and duties, however, some may have specific customs reliefs 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 EU. For these purposes, the Isle of Man meets the definition of being within the EU. Use of a single member LLC would go some way towards demonstrating that the company, being established in the Isle of Man, met 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 appropriately licensed registered agent, will go some way to supporting the requirement for a company to be established in the Island.

Madam President, 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.

Madam President, I beg to move the Second Reading of the Limited Liability Companies (Amendment) Act 2013.

The President: Hon. Member, Mr Downie.

Mr Downie: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that the Limited Liability Companies (Amendment) Bill 2013 be read a second time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Limited Liability Companies (Amendment) Bill 2013 – Clauses considered

The President: We turn now to clauses, Hon. Members.

Clause 1.

Mr Braidwood: Thank you, Madam President.
Madam President, clause 1 provides the short title of the Bill.
I beg to move that clause 1 stands part of the Bill.

Mr Downie: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 1 do stand... Did you wish to speak, Mr Coleman? Yes.

Mr Coleman: Yes, I do. Thank you, Madam President.

The title 'The Limited Liability Companies (Amendment) Act' implies that if the company – let's say a doctor in America – opened a single member limited liability company in Isle of Man, and he was sued for medical negligence, my understanding is that the company is not 'limited' because the single member can still be personally sued. So the company, yes, is limited liability, but my understanding is that in the States, the member can be sued for the actions of the limited liability company.

So I am merely pointing out that possibly it is a little bit of a misnomer. That is my understanding anyway.

Thank you, Madam President.

The President: Do you wish to respond, Mr Braidwood?

Mr Braidwood: I will seek clarification, Madam President, on that, because that is not one point that has been raised with me. I will come back at the Third Reading if I may, Madam President.

I beg to move.

The President: The motion is 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.

Clause 2.

Mr Braidwood: Thank you Madam President.

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 subsection (6) to remove the requirement for a limited liability company to be formed with two or more members.

Madam President, I beg to move that clause 2 stand part of the Bill.

Mr Downie: I beg to second, Madam President, and reserve my remarks.

The President: The motion is 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.

Clauses 3 and 4.

Mr Braidwood: Thank you, Madam President.

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 subsections (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 of the LLC.

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

Madam President, I beg to move that clauses 3 and 4 stand part of the Bill.

Mr Downie: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clauses 3 and 4 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

That concludes consideration of Item 2, Hon. Members.