



# CONSULTATION

  

# Limited Liability Companies (Amendment) Bill 2013

5 August 2013 to 16 September 2013

Issued by:  
The Treasury  
Isle of Man Government  
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The concept of the limited liability company was introduced into the legislation of the Isle of Man in the Limited Liability Companies Act 1996.

The limited liability company was originally developed in the USA. Each state within the USA has its own legislation which is substantially similar, with some variations.

At the time that the Isle of Man's Act was brought in, the default position in respect of USA limited liability companies was that they required two members. During the intervening period, all of the states have amended their legislation to allow for the creation of single member limited liability companies.

This consultation is on the draft Limited Liability Companies (Amendment) Bill 2013, which proposes to amend the Act to permit single member limited liability companies.

The Treasury is inviting comments on the draft Bill which can be found on the Treasury and DED consultation pages, using the links below:

Treasury <http://www.gov.im/ConsultationDetail.gov?id=392>

DED <http://www.gov.im/ConsultationDetail.gov?id=393>

Please note that submission of a response will not be a guarantee that a change will be made to the draft Bill.

A summary of the responses received will be posted on the Treasury website at <http://www.gov.im/treasury/consultations.gov>.

**Respondents must please provide contact details with their submissions.**

While the summary document will not contain sufficient information to permit identification of respondents, anonymous submissions will nevertheless be disregarded.

Responses should be sent in writing or by email (preferably as Word documents) to:

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**Please ensure that comments are received by no later than Monday 16 September 2013.**

## 1. Background

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 Liabilities Companies Act 1996 (“the Act”).

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.

## 2. The current position

The concept of the single member LLC (“SMLLC”) did not exist at the time at which the Act was drafted. The Isle of Man’s Act requires LLCs to have a minimum of two members.

The table below shows that SMLLCs are now permitted in all 50 states in the US.

Alabama	Kentucky	North Dakota
Alaska	Louisiana	Ohio
Arizona	Maine	Oklahoma
Arkansas	Maryland	Oregon
California	Massachusetts	Pennsylvania
Colorado	Michigan	Rhode Island
Connecticut	Minnesota	South Carolina
Delaware	Mississippi	South Dakota
D.C. <sup>1</sup>	Missouri	Tennessee
Florida	Montana	Texas
Georgia	Nebraska	Utah
Hawaii	Nevada	Vermont
Idaho	New Hampshire	Virginia
Illinois	New Jersey	Washington
Indiana	New Mexico	West Virginia
Iowa	New York	Wisconsin
Kansas	North Carolina	Wyoming

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<sup>1</sup> Washington DC is in the District of Columbia. This is not a state per se – it was the intention of the Founding Fathers that the United States capital should be at a neutral site, not giving favour to any existing state; as a result, the District of Columbia was created in 1800 to serve as the seat of government.

### **3. Taxation of LLCs in the Isle of Man**

Section 2M of the Income Tax Act 1970, treats Isle of Man LLCs as partnerships. It is the members of the LLC who are required to pay income tax on the profits of the LLC and not the LLC itself.

Section 2M of the Income Tax Act 1970 is below:

#### **2M Taxation of members of limited liability companies**

(1) Notwithstanding the provisions of the Income Tax Acts relating to the taxation of a body corporate, for the purposes of those Acts —

(a) a limited liability company shall be treated in all respects as if it is a partnership; and

(b) each member of a limited liability company shall be treated as a partner.

(2) As a consequence of subsection (1) —

(a) a limited liability company shall not be liable to pay income tax on its profits; and

(b) each member shall be liable to pay income tax at the appropriate rate in respect of his whole income, including his share of the profits of the limited liability company.

### **4. Taxation of LLCs in the USA**

In the US, the Internal Revenue Service (“IRS”) affords differential tax treatment to LLCs, depending on how these are structured, and what elections are made by the members of the LLC.

The IRS has issued the following guidance in respect of LLCs:

“An LLC is an entity created by state statute. Depending on elections made by the LLC and the number of members, the IRS will treat an LLC either as a corporation, partnership, or as part of the owner’s tax return (“a disregarded entity”). Specifically, a domestic LLC with at least two members is classified as a partnership for federal income tax purposes unless it files Form 8832 and affirmatively elects to be treated as a corporation. And an LLC with only one member is treated as an entity disregarded as separate from its owner for income tax purposes (but as a separate entity for purposes of employment tax and certain excise taxes), unless it files Form 8832 and affirmatively elects to be treated as a corporation.

If a single-member LLC does not elect to be treated as a corporation, the LLC is a “disregarded entity,” and the LLC’s activities should be reflected on its owner’s federal tax return.”

## **5. What does the proposed amendment to the Limited Liability Companies (Amendment) Bill 2013 achieve?**

The Limited Liability Companies (Amendment) Bill 2013 ("the Bill") proposes to amend the Act to reduce the minimum number of members that an LLC must have, from two to one.

The Bill also proposes to amend section 2M the Income Tax Act 1970. The insertion of new subsections will ensure that the tax treatment of a SMLLC in the Isle of Man will mirror that of a SMLLC in the USA.

## **6. Why is this change in status desirable?**

Some classes of assets that are either located in the USA or are registered in the USA ("US assets"), are regulated by the US state and federal authorities (collectively referred to as "the US authorities"). As a general rule, and subject to certain limited exceptions, the US authorities require US assets to be owned by US citizens.

It is common practice for US assets to be held in a SMLLC. Provided the member of the SMLLC does not make an election on Form 8832, the SMLLC will be treated as a disregarded entity for US tax purposes. This appears to satisfy the US authority that the US asset that is held in the SMLLC is owned by a US citizen.

By following the lead of the US, permitting SMLLCs in the Isle of Man should enable a US citizen to satisfy the US authorities that the US asset is indeed owned by a US citizen.

Indications to date are that the US tax treatment of a SMLLC incorporated in the IOM will permit the owner of the US asset to ensure that the tax treatment in the US will be that of a disregarded entity.

## **7. Who is likely to make use of the SMLLC?**

An example of where this might be used is where goods need to be imported into the European Union ("EU"). Most goods imported into the EU are liable to import taxes and duties however some may have specific customs reliefs associated with them, e.g. 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 these "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 EU. Use of a SMLLC would go some way towards demonstrating that the company, being established in the Isle of Man, met one of the EU's criteria.

Whilst the SMLLC does not in itself create additional scope for establishment within the EU, it does however, increase the range of options that are available to companies seeking establishment in Europe.

Provided that the Customs and Excise Division of the Treasury is satisfied that, in the case of End Use Relief, the establishment rules have been satisfied, the Isle of Man can, thanks to

the efficiencies of the Customs and Excise Division, usually facilitate the process within a relatively short timescale.

Where a VAT registration is required in respect of the use of a US asset, as long as this meets the "business test" derived from the case of *Lord Fisher* (STC 238), it should be possible to obtain a VAT registration in the Isle of Man, again within a relatively short timescale.

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 rationale for registration in the IOM.

There are however some basic requirements that must be satisfied to ensure that no registrations that are made in the Isle of Man would fall within the definition of an "abusive practice". There is no change to the existing policy.

**Consultation questions:**

- 1. Do you think that the Limited Liability Companies Act 1996 should be amended to allow single member LLCs?***

***If not, please give reasons for your answer.***

- 2. Do you agree that the Income Tax Act 1970 should be amended to reflect the amendment to the Limited Liability Companies Act 1996?***

***If you disagree, please give reasons for your answer.***

- 3. Do you have any other comments or observations about the proposal to allow for the creation of single member LLCs?***