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New Yacht Ownership Structures in a Changing Ownership Environment

By Johnlee Curtis of Moore & Company

Offshore registries compete for customers principally through ownership structures known as single purpose corporate entities (SPE's). These SPE's generally hold high value personal assets, such as pleasure yachts, private jets, etc. Each such jurisdiction and flag-state has its own strengths and weaknesses, and each jurisdiction's laws provide a different degree of tax-friendliness, cost-effectiveness, liability-avoidance, and simplicity of formation. Most recently, the Republic of the Marshall Islands has implemented an agile and innovative SPE LLC structure they call the "Series LLC" (S-LLC). This structure appears to have an application in certain yacht ownership scenarios – especially in the case of fractional yacht ownership.

In brief, the law of the Republic of the Marshall Islands, for example, now provides for the creation of a "series" of asset containers within an S-LLC. The chief benefit of this structure is that any debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular asset container are enforceable against that asset container only, and not against the assets of the Series LLC generally (or any other asset container within that LLC). In other words, separate classes of members can be established, whereby each asset container may be effectively treated as a separate entity. The asset containers within the S-LLC effectively act as sub-entities within an umbrella LLC. The concept is based upon a similar corporate structure originally conceived under Delaware corporate law. As in an LLC, the S-LLC is governed by an Operating Agreement, which may provide for separate members, managers, interests, business purposes, rights and/or duties with respect to the property or obligations held within each asset container. Marshall Islands law also provides that an asset container can be terminated without affecting the other asset containers within the Series LLC; and an asset container can make distributions to its own members without regard to the financial condition of either the other asset containers, or the umbrella LLC.

So-called "fractional" yacht sales, whereby several (or, in some cases, many) percentage ownership shares of a vessel are sold in return for fractional usage rights of the vessel, can be problematic for reasons both structural and practical. The most glaring challenges structurally, as that is the sole scope of this examination, are the issues of liability, flexibility, and confidentiality.

The S-LLC structure can be easily transposed into fractional yacht ownership. In such an application, each asset container owns a vessel asset in the fractional yacht program, and each fractional owner of the particular yacht, owns a percentage of that particular asset container. Since liability is confined to a particular asset container, each group of fractional yacht owners is protected against the liabilities incurred by the other yachts (and group of owners) in the fractional fleet. There are additional benefits to using an S-LLC to structure a fractional yacht program. Although of relatively minimal consideration considering the price points for many fractional yacht programs, using an S-LLC structure saves money on startup costs and ongoing administrative costs with the Corporate Registry, as well as on fees from the transactional attorney setting up the structure.

New Yacht Ownership Structures in a Changing Ownership Environment

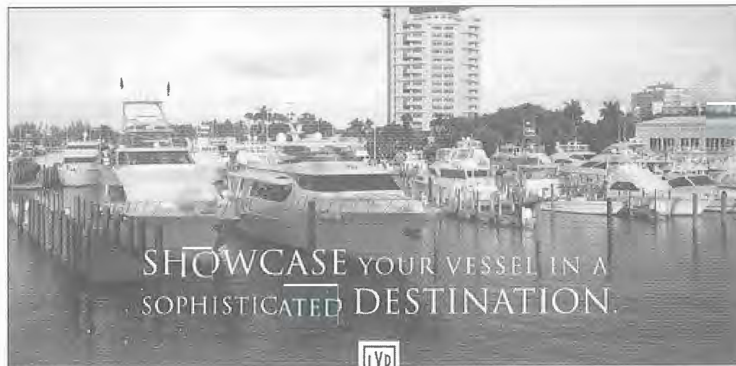
Continued from pg. 18

This is because, instead of having to form multiple LLC entities with each entity holding a separate vessel asset, only a single S-LLC entity must be formed. Also, there is a benefit of potentially greater importance: privacy. Minimal client information must be provided to the Registry in order to structure an S-LLC or any of the series asset structures, assuring a high degree of confidentiality for each fractional share owner.

In a changing ownership environment for high value personal assets, the S-LLC structure is one newly available structure. For complex ownership situations, such as fractional yacht programs, the S-LLC is an efficient solution.

** The information offered in this column is summary in nature and should not be considered a legal opinion.Contact john.curtis@moore-and-co.net / 786-221-0600*

The Republic of the Marshall Islands LLC Act, §79.
Del. Stat. § 18-215. Note that the laws of Iowa, Illinois, Nevada, Oklahoma, Tennessee and Utah also provide for S-LLCs, or some counterpart thereof.



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