

# South Dakota

## Limited Liability Companies

### Nature

Limited Liability Companies (LLCs) created in South Dakota have legal personality separate from their members, and combine features of corporations and partnerships.

---

### Formation

LLCs are created in South Dakota with the filing of the Articles of Organization with the South Dakota Secretary of State, and the issuance of the Certificate of Organization.

---

### Operating Agreement

The corporate governance rules for LLCs and the powers and duties of the Members and Managers, etc., are set-forth in an Operating Agreement, which is not required to be filed with the South Dakota Secretary of State.

---

### Annual Reporting Requirements

Annual Reports are filed with the South Dakota Secretary of State. There is no requirement to file a shareholder register with the South Dakota Secretary of State.

---

### Ownership and Management

The shareholders of LLCs are typically referred to as “members”, whose ownership interest is reflected in a membership certificate. The Managers of LLCs are charged with executive responsibility, LLCs can be Member-Managed or Manager-Managed.

---

### Charging Orders

Creditors of the member of a South Dakota LLC is a “Charging Order,” which gives creditors the rights to attach the proceeds of distributions, but creditors cannot force distributions.

---

### IRS Check-the Box Rules

If the LLC elects to be treated as a “C” corporation by checking the box” and obtaining a Federal tax ID number, IRS Form SS-4, and completing IRS form 8832, it will be treated as a non-transparent US corporation subject to US tax on world-wide income, requiring the LLC to file a US corporate tax return, Form 1120.

---

### Single Member LLCs

A single member US LLC with one member which does not “check the box” and does not elect to be treated as a corporation will be treated as a disregarded entity and considered fiscally transparent pursuant to IRS Default Classification Rules (Form 8832). From a US tax perspective, this means that the LLC is disregarded and “passes through” its profits and losses to its member.

---

### **Multiple Member LLCs**

An LLC with two or more foreign (non-US) members which does not “check the box” and does not elect to be treated as a US corporation may be treated as a US partnership (if the attributes of a partnership are present), and if so should obtain a US tax ID number.

---

### **US Corporate Taxation**

Domestic corporations, which are created or organized under the laws of any state, are subject to Federal income tax on worldwide income at a rate of 21%. There is no state corporate income tax in South Dakota.

---

### **US Estate Taxes Reporting**

Membership interests in US LLCs are considered US situs assets for purposes of US estate tax. Non-US residents holding US LLC interests directly may be liable for US estate tax inclusion.

---

### **Reporting**

Foreign owned US LLCs are required to file IRS Form 5472 annually with the IRS disclosing the foreign beneficial owner for years in which there is a reportable transaction. FBARs must be filed for LLCs that hold foreign bank accounts. The Corporate Transparency Act (CTA) requires the disclosure of beneficial ownership to FINCEN.

---

### **Notice**

CISA Trust is not a legal or tax advisor and this information is not offered as tax advice