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# STATES OF JERSEY



## **CONSULTATION PAPER: DRAFT LIMITED LIABILITY PARTNERSHIPS (JERSEY) LAW 201- AND DRAFT LIMITED LIABILITY PARTNERSHIPS (DISSOLUTION AND WINDING UP, ETC.) (JERSEY) REGULATIONS 201-**

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Presented to the States on 26th January 2016  
by the Chief Minister

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**STATES GREFFE**



## Public Consultation on Limited Liability Partnerships (Jersey) Law 201-

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Summary:

Limited Liability Partnerships are common in many jurisdictions. Jersey has a Law enabling businesses to set themselves up as limited liability partnerships. A new draft Law has been prepared that would improve the existing Law. The aim of this consultation is to invite comments on the proposed new Limited Liability Partnerships (Jersey) Law 201- and the Limited Liability Partnerships (Dissolution and Winding Up, etc.) (Jersey) Regulations 201- before they are submitted to the States of Jersey for debate.

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Date published:  
22 January 2016

Closing date:  
4 March 2016

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Supporting documents attached:

Draft Limited Liability Partnerships (Jersey) Law 201-

*and*

Draft Limited Liability Partnerships (Dissolution and Winding Up, etc.) (Jersey) Regulations 201-

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### **How we will use your information**

The information you provide will be processed for the purpose of consultation. The Department of the Chief Minister will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011. Please note that we may quote or publish responses to this consultation, but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

### Outline of consultation

Limited Liability Partnerships (“LLPs”) are partnerships governed by the terms of their partnership agreements. They have some of the benefits that are offered by companies including separate legal personality and a form of limited liability. LLPs are flexible structures which can be used for a variety of purposes: for instance, by professionals, by small businesses and in financial services. They were innovative when introduced in Jersey in 1997. Since that date, LLPs have become commonplace across the world, albeit taking different forms.

After a previous consultation, the Limited Liability Partnerships (Jersey) Law 1997 (the “**1997 Law**”) was amended by the Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 2013 (the “**2013 Amendment**”). The 2013 Amendment did not incorporate all the changes that had been suggested by the LLP steering group. It was decided initially to remove the largest impediment to businesses setting up Limited Liability Partnerships (“**LLPs**”). The requirements for a £5 million bond were replaced with a requirement for solvency statements to be filed.

Work continued on a restatement of the 1997 Law and the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998 (“the **1998 Regulations**”). The results are the Draft Limited Liability Partnerships (Jersey) Law 201- (“the **Draft Law**”) and the Draft Limited Liability Partnerships (Dissolution and Winding Up, etc.) (Jersey) Regulations 201- (“the **Draft Regulations**”).

The aim of replacing the old framework with the Draft Law and the Draft Regulations is to make the Jersey LLP more competitive, so that it is used as a vehicle of choice for local and international businesses.

Respondents are invited to comment generally on the Draft Law and Draft Regulations, as well as to answer specific questions that are raised. It should be noted that the current drafts are subject to change before being finalised.

## Ways to respond

This consultation can be responded to in the following ways:

**Write to:** James Mews  
Director, Finance Industry Development, Financial Services Unit  
Chief Minister's Department  
5th Floor, Cyril Le Marquand House  
The Parade, St. Helier,  
Jersey JE4 8UL

**Telephone:** +44 (0) 1534 440413

**E-mail:** [j.mews@gov.je](mailto:j.mews@gov.je)

Responses from the finance industry may be sent to Jersey Finance at the address below:

**Write to:** William Byrne  
Head of Technical, Jersey Finance Limited  
4th Floor, Sir Walter Raleigh House  
48–50 Esplanade  
St. Helier  
Jersey JE2 3QB

**Telephone:** +44 (0) 1534 836021

**E-mail:** [william.byrne@jerseyfinance.je](mailto:william.byrne@jerseyfinance.je)

Responses sent to Jersey Finance will be shared with Government unless the respondent indicates that they wish to remain anonymous. Please indicate clearly on your response if this is the case.

This consultation paper has been sent to the Public Consultation Register.

## Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact [Communications.Unit@gov.je](mailto:Communications.Unit@gov.je)

## **Consultation on the Draft Law and Draft Regulations**

### **Introduction**

1. The Assistant Chief Minister invites responses on the text of the Draft Law and Regulations. The Draft Law comprises a number of changes from the 1997 Law. The most significant changes are commented on in this paper. However, there are many clauses where the language of the 1997 Law has been retained.

### **Article 2 – Requirements to contribute**

2. Under principles of customary law it is a key requirement of a partnership that the partners contribute “something of value” to the partnership.
3. Under Section 1 of the Partnership Act 1890 as a matter of English law there must be a carrying on of a business in common by two or more persons with a view of profit.
4. Under the 1997 Law, Article 2(2)(b) requires partners in a partnership to contribute effort and skill to the business as an agent of the business. Article 2(2)(c) states that the profits of the business shall be divided between them and that they shall each have an interest in the limited liability partnership property.
5. The reason for these provisions was to satisfy the requirements of the customary law, to ensure that the English law criteria for a partnership were met and that the separate legal personality of an LLP would not result in a loss of tax transparency in other jurisdictions. At that time it was considered, on the basis of advice received, that there was no need for mutual agency as between the partners in order to satisfy the above requirements.
6. Article 2(2)(b) of the 1997 Law ensures that there is community of contribution and Article 2(2)(c) ensures that there is community of (and direct interests in) the partnership property.

7. It is considered that the contribution of capital as an alternative to the contribution of skill and effort is consistent with the LLP being characterised as a true partnership and for there to be a community of contribution.
8. Accordingly, Article 2(1)(b) of the Draft Law contains a broader provision than the 1997 Law, namely that each person may contribute capital or effort and skill to the business.
9. Other than this change, and the new requirement for a secretary rather than a designated partner, the provisions concerning the essential criteria of an LLP have not been amended.

**Question 1:**

**Do you agree that partners should be able to contribute capital to the partnership, as an alternative or in addition to the existing requirements to contribute effort and skill, in order to qualify as a partner? If you think that there are any drawbacks with this approach please state what they are.**

**Registration requirements and misleading or undesirable names**

10. In the main, the Draft Law is similar to the 1997 Law in respect of the registration requirements. However, the Draft Law develops the 1997 Law by granting the Registrar the power to direct that an LLP changes its name when the name registered is misleading or otherwise undesirable in the opinion of the Registrar under Article 6(4). Where a direction is issued, the LLP has 3 months to comply or such longer period as the Registrar may allow under Article 6(5). There is also a procedure added to permit an appeal to be made against a direction issued by the Registrar under Article 6(6).
11. The Draft Law clarifies the effective date on which a change of name takes effect under Article 6(8). A change of name will take effect upon the certificate being issued by the Registrar. This date is proposed as it is the point in time that the change of name becomes officially recognised and the Registrar has decided not to exercise his powers to refuse to register the change of name.

12. The registered office provisions which are contained in Article 7 in the Draft Law are updated from the 1997 Law by the inclusion of requirements similar to those in the Companies (Jersey) Law 1991 to ensure that the LLP is entitled to use the address for such purposes.

**Question 2:**

**Do you agree that the appropriate time for a change of name to take effect is on the certificate being issued by the Registrar?**

**Article 12 – Specified Solvency Statement**

13. The major change made to the 1997 Law by the 2013 Amendment was to remove the requirement for a £5 million bond in Article 6 of the 1997 Law. It was replaced with an annual requirement for a solvency statement. The rationale was that a bond was seen as an outdated method of providing creditor protection. It was a significant deterrent to LLPs being set up compared to other jurisdictions and no other jurisdiction had a requirement to keep £5 million of reserves in a bond to protect creditors. Instead other jurisdictions with LLP structures either require accounts or solvency statements to be filed. Other jurisdictions with these approaches include the U.S.A., the U.K., Dubai, Japan, Qatar, various provinces in Canada, Singapore and India.
14. Jersey decided to adopt the requirement for a solvency statement where partners wish to withdraw property from the LLP. This approach requires LLPs to make a 12 month forward-looking statement which is considered to be more helpful to creditors than other alternatives such as the public filing of accounts. Accounts can be opaque as well as out of date at the time that they are filed. There are also similarities in this respect with the development of company law where there has been a move towards the use of the solvency statement as a means of providing creditor protection in certain circumstances.



15. Article 12 in the Draft Law provides the definition of a specified solvency statement. It can be summarised as a statement made by the limited liability partnership that an LLP is solvent now and will remain solvent until 12 months into the future considering the financial resources available to the LLP and the intentions of the partners who control the management of the LLP in respect of the management of the LLP's business. Solvency is based on the ability of the LLP to discharge its debts as they fall due and to continue to carry on the business of the LLP. The specified solvency statement must be made by one or more of the partners who together control the management of the LLP.
16. However, in order to promote flexibility a solvency statement does not have to be made annually. A distinction has been drawn between the role of the specified solvency statement and requirements to keep accounting records. An LLP is required to keep accounting records which under Article 11(2) must be sufficient to show and explain the LLP's transactions and be such as to disclose with reasonable accuracy at any time the financial position of the LLP at that time.
17. In contrast to the requirement for accounting records which assist the partners in the LLP in knowing whether the LLP is solvent, the requirement for a specified solvency statement is to protect creditors when partners wish to withdraw property or their share of the profits (once struck) from the partnership.
18. If no specified solvency statement is made in the 12 months prior to a withdrawal, or a specified solvency statement has been made without reasonable grounds for the opinion, the partner becomes liable to the LLP to return the property to the LLP or to pay a cash sum representing the value of the property. Article 12(12) and (13) also impose criminal liability on both an LLP and a partner in the LLP where a partner signs a specified solvency statement without reasonable grounds for the opinion stated in the statement.
19. There is a mechanism for a copy of each specified solvency statement to be sent to the Registrar along with the annual return each year under Article 20(3).

20. Should the LLP decide not to make a specified solvency statement in a calendar year then there is no direct penalty that is applicable. However, there is an impediment to the partners being able to withdraw assets (including a share of profits) from the partnership and realise the fruits of their labours. The LLP will also have to manage the position with its customers and trade creditors who may refuse to deal with the LLP if no specified solvency statement has been signed. However, there are occasions where an LLP's main role is to hold an asset where there may be no trade creditors and the flexibility to decline making a specified solvency statement will save costs.
21. Where a partner is liable to return property to the LLP under Article 12(6) an application to Court may be made in order to ask the Court to reduce liability and therefore to have the effect of ratifying the transaction. Under Article 12(8) a partner must satisfy the Court that at the time of the withdrawal the LLP was solvent, since that time the LLP has made a specified solvency statement, and that it would not be contrary to the interests of justice for the partner to be released from liability under Article 12(6).
22. Article 12(9) aims to ensure that liability for a withdrawal without the LLP making a specified solvency statement as set out in Article 12(5) is not also a breach of Article 5(3). That means that a withdrawal made solely in Article 12(5) circumstances will not result in liability accruing under Article 5(3) unless there are separate circumstances leading to liability under Article 5(3). However, where the withdrawal is also made in breach of Article 5(3), i.e. the partnership agreement did not permit drawings at that time, as well as there being no specified solvency statement in place, then there is both a breach of Article 12 and Article 5.
23. To remove any ambiguity over the interrelationship between Articles 5 and 12, Article 12(8) ensures that the Court may not extinguish the partner's liability under Article 12 to a greater extent than is permitted under Article 5.

24. New additions to the clause adopted in the 2013 Amendment are set out in Article 12(6). An LLP may require a partner to return the property or the value of the property if the property has appreciated in value. Further a partner who is liable to pay cash to the partnership under Article 12(7) is liable to pay interest at the prescribed rate.

**Question 3:**

**Is it appropriate for the LLP to be able to claim back the increased value of property that has been withdrawn in breach of a solvency statement in certain circumstances? If your answer is no, then please state why.**

**Liability under Article 5 of a partner or a former partner in an LLP**

25. The general policy intent is for no substantive change to the position concerning liability, set out in Article 5. However, the provision has been slightly redrafted in order to assist ease of understanding and to take into account the interplay with liability for withdrawals where the LLP has failed to make a specified solvency statement under Article 12.
26. The key provisions concerning liability are set out in Articles 4 and 5. Firstly Article 4(1) states that the LLP is liable for the debts or losses which if the LLP were a normal partnership the partners would otherwise be liable.
27. Then Article 5 addresses the liability of partners. The initial position is that a partner or former partner is not liable for the debts or losses of the LLP, including those caused by another partner (Article 5(1)). This continues to be the position even after the LLP's registration has been cancelled (Article 5(5)). However, this limitation of liability does not affect any liability of a partner firstly for their personal debts (i.e. debts incurred as individuals other than when they are acting as partners) and secondly for any loss for which, even when acting as partners, they incur personal liability under the general law (Article 5(2)). The latter approach was originally modelled on the general position in the case of U.S. LLPs.

28. Therefore, partners may still be personally liable to third parties (alongside the LLP) for losses for which they are treated as responsible. This means that a partner in an LLP will be liable for his own acts of negligence, i.e. when he is treated as having assumed a duty of care towards a third party claimant. Precedent from the U.K. and elsewhere suggests that such a duty of care will readily be inferred where a professional service is being provided to a client, and has even been held to arise in the case of an employee. Another example of where personal liability may arise automatically, is where a partner, rather than the LLP, takes on an office (e.g. a trusteeship or directorship): in such a case personal liability is unavoidable, unless it can be excluded by contract.
29. More doubtful is whether a partner in an LLP may also be liable *to the LLP* for the consequences of his own negligence. The better view is that no duty of care or duty to avoid being guilty of “ordinary” (as opposed to gross) negligence is owed to the LLP, but the point is arguable (any analogy with U.K. LLP law must be viewed with caution as the principles are different).
30. Article 5(3) covers additional circumstances where a partner may be liable for any debt or loss of the LLP when he has withdrawn property (including a share of profits) from the LLP other than in the normal course of the affairs of the LLP or in any circumstances specified in Regulations made under Article 38(1). However, in such a case the partner's personal liability is limited to the value of the withdrawal minus any amount that was previously recovered from the partner (Article 5(4)).
31. Article 5 also contains provisions to ensure that there is appropriate interlinking with circumstances where there is also liability under Article 12(5) in respect of the same withdrawal. This is referred to in the section on solvency statements and the consequences of a breach of Article 12(5) above.
32. Article 5(4) provides that where a withdrawal is made in circumstances that fall foul of both Article 5 and Article 12(5), the total liability of the partner under Articles 5 and 12 is restricted to the maximum that the partner can be forced to pay in respect of the Article 12(5) breach. This paragraph was inserted to remove the risk of double jeopardy where a partner is liable both under Article 5 and under Article 12 and, without this cap, could be forced to

pay twice in respect of the same withdrawal. Article 12(8) also cross-refers to Article 5(3) so that the Court's powers where it decides to ratify a withdrawal where there is a failure to make a specified solvency statement under Article 12(5) are limited. The Court is not able to reduce a partner's liability more than the amount of the liability remaining under Article 5(3) if the withdrawal was other than in the ordinary course of affairs of the LLP, for example if there was a breach of the partnership agreement.

33. Therefore, if there was a withdrawal of partnership property in breach of Article 5(3), namely other than in the ordinary course of the affairs of the partnership (perhaps because the partnership agreement prevented drawings at that time), and also a separate breach under Article 12(5) (because the LLP has not made a current specified solvency statement), then liability will remain under Article 5(3) and Article 12 even if the Court ratifies the breach of Article 12.

**Question 4:**

**Article 5 has provisions which reflect the 1997 Law concerning the quantum of liability when the LLP wishes to reclaim drawings from a partner other than in the ordinary course of the affairs of the partnership. Article 12, has different provisions regarding quantum if there is a breach of Article 12 where drawings are made without a current specified solvency statement. In summary, under Article 12 where the partner withdrew cash then interest is payable, and where the property was other than cash and the property is no longer available, the LLP may elect to receive a sum equal to any increased rise in value. Should liability be standardised in these two provisions?**

**If yes then state which approach should be taken.**

**Question 5:**

**Do you agree with the policy as stated in the notes and the draft regarding the interplay between Article 5 and 12? If your answer is no, then please state why.**

### **Designated Partner replaced by secretary**

34. When the LLP industry steering group was constituted considerable thought was given to international requirements to be able to access accounting records while retaining flexibility and ensuring that accountability would rest on appropriate parties.
35. The proposal adopted by the steering group was to replace the designated partner (who did not have to be located in Jersey in the 1997 Law) with a Jersey-based secretary who would be responsible for keeping accounting records including solvency statements and filing annual returns. Where a partner is Jersey resident, then they could act as the secretary with certain limitations set out below. Where all the partners are incorporated or reside overseas, the secretary would be either a company or an individual who is a registered person under Article 2(4)(e) of the Financial Services (Jersey) Law 1998 to carry on trust company business. This requirement will assist with ensuring the accountability of a responsible person within the jurisdiction.
36. The main advantage of this approach is that it creates considerable flexibility while ensuring accountability. The role of the designated partner under the 1997 Law was mainly administrative (to be the party responsible for filing documents with the Registrar) and had no substantive management function. Under the Draft Law, for predominantly domestic LLPs or LLPs where there is a Jersey-based partner, it is proposed that the role of secretary can be carried out by that person with the potential for no additional costs. For non-domestic LLPs, the role of secretary can be carried out by an appropriately registered person without creating a new class of business.
37. This proposal is set out in Article 8 of the Draft Law. A secretary must be appointed from the date that the LLP is registered, and ceases only on cancellation of the LLP or in circumstances set out in the Draft Regulations. Further a deputy secretary may be appointed by the LLP where the secretary is unable to carry on a function (see Article 8(1)). If the secretary's appointment ceases, then the LLP must appoint a new secretary within 28 days.

38. The secretary may be a company incorporated anywhere in the world or an individual. However, where the secretary is not a Jersey resident or Jersey incorporated partner, it must be registered to carry on secretarial services to LLPs (a new addition to Article 2(4)(e) of the Financial Services (Jersey) Law 1998) (see Article 8(3)). The duties of the secretary are set out in Article 10(3).
39. The role of the secretary is to hold certain records and to file the annual return. Under Article 9(1) the secretary shall keep at a place in Jersey all the accounting records and returns of the LLP that are provided to the secretary by the LLP. Under Article 11(4) where the accounting records are kept outside Jersey, the LLP must send its secretary every 6 months a return that must be sufficient to show and explain the LLP's transactions and be such as to display with reasonable accuracy at any time the financial position of the LLP. A copy of any specified solvency statement made by the LLP is also to be sent to the secretary under Article 12(3).
40. The secretary also has the role of filing the annual return with the registrar. Under Article 20(1), the secretary must deliver the annual return which states whether the secretary has received from the LLP any specified solvency statement made by the LLP and the requisite accounting records/return.

**Question 6:**

**Bearing in mind on the one hand the need for flexibility, and on the other the requirements for accounting records to be accessible, do you have any objections to the steering group's proposal that the designated partner is replaced by a Jersey regulated secretary or a Jersey resident secretary (in the case of an individual who is a partner)?**

**If there are objections please state your reasons and what your preferred alternative would be stating reasons for your views.**

**Transitional Provisions including governing the change from a designated partner to a secretary**

41. The Draft Law is intended to repeal and replace the 1997 Law. Therefore, LLPs registered under the 1997 Law would become governed by the Draft Law and transitional provisions are required to make this work effectively.
42. It is proposed that there would be a time limit of one year for existing LLPs to replace the role of a designated partner with a secretary. If a secretary is appointed earlier than 1 year, then it is proposed that the provisions relating to the secretary would apply from the date that the secretary is appointed. However, it is proposed that the designated partner's role would continue until the secretary is appointed. Therefore, the designated partner would, for example, continue to deliver to the Registrar any specified solvency statement made by the LLP, as required under Article 6(8) of the Draft Law, until the secretary is appointed.
43. Once the Draft Law has been in force for one year, the LLP would be treated as if it had been registered under the Draft Law. If the LLP has not appointed a secretary within one year of the Draft Law coming into force, the LLP would be committing an offence under Article 8.
44. Where the Draft Law places an obligation on a secretary which is not an obligation of a designated partner under the 1997 Law, it is proposed that there would be transitional provisions placing the obligation on the LLP, rather than placing additional requirements on the designated partner, until a secretary is appointed. It is proposed that where provisions are substantially the same in the Draft Law as in the 1997 Law, then the new provisions would apply immediately without a transitional period.

**Question 7:**

**Are the transitional provisions appropriate? If your answer is no, please state why.**



**Question 8:**

**Are the transitional provisions for the replacement of the designated partner with a secretary adequate? If your answer is no please state why.**

**Partners entering into transactions with the LLP**

45. Article 14 permits a partner in an LLP (subject to any terms in the partnership agreement to the contrary) to enter into any transaction with the limited liability partnership, including lending money to, and borrowing money from the LLP. This would permit a partner of an LLP to be an employee of the LLP at the same time. This is considered to be an improvement on the position in the United Kingdom which was recently considered in the case of *Reinhard -v- Ondra LLP* [2015] EWHC 26 (Ch) handed down on 14th January 2015.

**Time limits for the LLP carrying out certain functions**

46. The 1997 Law generally sets a time limit of 28 days in order for the LLP or the designated partner or the last remaining partner to take actions required by the statute. For example, under Article 8(6), when there is a change in particulars of the partners the list kept at the registered office must be amended within 28 days. Article 21 requires the person responsible for winding up the affairs of the LLP to deliver a statement of dissolution to the Registrar within 28 days of the dissolution. Recently, the Companies (Jersey) Law 1991 was amended to reduce many of the time periods in respect of companies. There are arguments in favour of consistency across the financial services legislation; however, particular regard also has to be had to the effect on third parties, comparable insolvency legislation and whether the obligation is one that is fair to require a party to comply with within a short period of time. For example, where an appeal has to be made against a decision of the registrar, is it fair to only give the party 21 days in which to take legal advice and decide whether to make an appeal?

47. The provisions in the Draft Law requiring actions to be taken within 21 or 28 days are as follows:
- a. Article 6(6) requires an LLP to make an appeal to the Court from a direction of the registrar to change a misleading name within 21 days;
  - b. Article 6(7) requires an LLP to comply with the order of a Court to change its name within 28 days;
  - c. Article 7(9) requires an LLP to amend the records of the particulars of the partners if they change within 28 days;
  - d. Article 8 requires the LLP to appoint a new secretary within 28 days of the secretary's appointment ceasing;
  - e. Article 12(3) requires the LLP to send a specified solvency statement to the secretary within 28 days;
  - f. Article 19(1) requires the LLP to send any changes in the declaration post registration to the registrar with such a statement signed by the secretary within 28 days.
48. Under the Draft Regulations the actions to be taken within 28 days are as follows:
- a. Regulation 5(1) requires a secretary to deliver to the registrar a statement of dissolution within 28 days of the dissolution of an LLP other than when such occurs by an act of the court;
  - b. Regulation 6(2) requires the partner making an application to dissolve an LLP by an order of the court to deliver a copy of the order to the registrar within 28 days;
  - c. Regulation 7(2) requires an LLP to send to the registrar the statement of cancellation of dissolution when two of the partners wish to acquire the partnership interests of the remaining partners within 28 days;
  - d. Regulations 9(7), 14(7) and 17(5) require the dissolution manager to deliver to the Judicial Greffier notice of the vesting of the LLP's property in another party within 28 days;
  - e. Regulation 12(1) requires the dissolution manager to deliver to the registrar a statement of the winding up of the LLP within 28 days;
  - f. Regulation 15(1)(b) requires a dissolution manager to call a meeting of all known creditors within 28 days of sending a notice to the registrar stating that he is of the opinion that the LLP is insolvent;

- g. Regulation 28(1) requires the LLP to deliver a copy of a declaration that an LLP is *en désastre* or an order recalling a declaration within 28 days to the registrar;
- h. Regulation 55(6) requires an LLP to deliver a copy of a decision of the court that an overseas order winding up the affairs of the LLP has been recognised in Jersey to the registrar within 28 days.

49. Amending these provisions to 21 days will give the LLP, dissolution manager, insolvency practitioner or secretary less time to take certain steps than is the case at present.

**Question 9:**

**Should the length of time be standardised at 21 days, 28 days or variations made for the activities required to be undertaken depending on what is required? Please explain your answer.**

**Dissolution and Cancellation of an LLP**

- 50. An LLP may be dissolved, wound up and the certificate cancelled for a variety of reasons. Firstly, an LLP must always have 2 or more partners. Therefore, under Regulation 4, an LLP shall be dissolved immediately on there ceasing to be 2 or more partners in the partnership.
- 51. Under Article 22, the registrar may serve on the LLP a notice of intended dissolution in a number of circumstances. These include where the LLP is no longer carrying on business, where there has been a failure of the LLP to appoint a secretary, to provide the requisite accounting records/return to the secretary, to pay fees owed to the Commission, to have a registered office in Jersey, and where there has been a failure of the secretary to provide returns to the registrar.
- 52. Where the omission is not rectified within the period of notice given in the notice served by the registrar, the registrar may serve a certificate of dissolution on the LLP.

53. Dissolution may also take place as a result of an act of a partner under Regulation 5, or by Order of the Court under Regulation 6, including where a partner is permanently incapable of performing his or her part of the partnership agreement, where a partner is unfairly prejudiced by another partner's conduct, and where it is just and equitable that the partnership is dissolved.
54. Following dissolution, the LLP is wound up pursuant to the Draft Regulations. Following the dissolution of the LLP, Regulation 7(1) permits two or more partners to acquire the partnership interests of the remaining partners, by agreement or direction of the Court. Upon a statement being sent to the registrar, the registrar must issue a certificate that the dissolution of the LLP is void under Regulation 7(3).
55. Article 22(6) states that the LLP may be reinstated from the state of dissolution where an interested person or a former partner applies to the Court from the date of dissolution of the LLP up to 10 years after the date of cancellation of the LLP.
56. Regulation 7(6) enables the Court to order that the certificate of dissolution is void where all the former partners agree, the LLP is not insolvent and a certificate of dissolution has been issued. Under Article 22(6) the Court may make the order on such terms as the Court thinks fit, and under Article 22(7) may give directions or provisions so as to place the LLP and other interested persons in the same position as nearly as may be as if the LLP had not been dissolved.
57. Parts 3 and 4 of the Regulations deal with winding up solvent and insolvent LLPs and will be discussed below.
58. After the registrar has been notified of the completion of the winding up of the affairs of the LLP, Article 23(1) states that the registrar shall cancel the entry in the register and issue a certificate of cancellation.

59. If there is some reason why the LLP should be reconstituted, such as an asset that was not dispersed remaining in the name of the LLP, the Court may order under Regulation 7(7) that the LLP is reinstated by the certificate of cancellation being declared void. Under Article 23(5) the Court may make the order on such terms as the Court thinks fit, and under Article 22(6) may give directions or provisions so as to place the LLP and other interested persons in the same position as nearly as may be as if the registration had not been cancelled.
60. The interrelation between Article 22 and Article 23 would therefore allow the Court to order both that the LLP is reinstated on the register in a dissolved state and that the dissolved state is itself reversed so that the LLP is fully reinstated on the register.

**Question 10:**

**Is there any reason why an LLP should not be reinstated following cancellation? Is it desired to permit an LLP to be reinstated both to a dissolved but not cancelled state, as well as a full reinstatement, i.e. where both the certificates of cancellation and dissolution are declared void?**

**Winding Up of Solvent LLPs**

61. Part 3 of the Regulations sets out the manner in which a solvent LLP is wound up. The policy objective is for the drafting to be similar to the 1997 Regulations unless there is a good reason to depart from that model.
62. The concept of a dissolution manager was created in order to identify the person(s) responsible for the winding up of the LLP's affairs, whether the partners themselves (or some of them) or a person appointed by them. Regulation 9 sets out the manner in which a dissolution manager is appointed. Circumstances include where a partner is the last remaining partner and the partnership dissolved because there were no longer 2 partners (Regulation 4), or where a dissolution manager is appointed by the remaining partners.

63. Regulation 9(3) states that the Court may appoint or remove a dissolution manager upon the application of a partner, or a dissolution manager appointed because, inter alia, they are the last surviving partner, or an interested party in certain circumstances.
64. The dissolution manager must do whatever is necessary or desirable to achieve a beneficial winding up of the LLP or otherwise act in accordance with the terms of the partnership agreement under Regulation 9(4).
65. Regulation 9(6) states that in circumstances where there are no longer 2 or more partners of the LLP, whether that causes a dissolution of the LLP or occurs after a dissolution, the LLP ceases to be a legal person, the duty to appoint a secretary ceases, and the LLP property vests in the dissolution manager who remains subject to the obligation to wind up the affairs of the LLP. While legal actions against the LLP may be continued or commenced against the dissolution manager, the dissolution manager is protected against personal liability and such proceedings shall only be enforceable against the LLP property.
66. Where the dissolution manager, a creditor or any partner, or in the absence of any of these persons, an interested party, is in need of guidance or seeks the assistance of the Court, the Court may give such directions as it thinks fit in respect of the winding up under Regulation 10.
67. Regulation 11 sets out the order of priority that the dissolution manager is to apply in settling the accounts of the dissolved LLP. Any LLP property remaining after liabilities have been repaid is to be divided between the partners in accordance with the terms of the partnership agreement or equally by default where the partnership agreement does not address the issue of division.
68. Following the completion of the winding up of the LLP, the dissolution manager is required to send a statement to the registrar stating that the affairs of the LLP have been wound up under Regulation 12(1) and the LLP's certificate will then be cancelled.

### **Winding up of Insolvent LLP**

69. Part 4 contains Regulations relating to the winding up of LLPs that are either insolvent at the time of dissolution or where the dissolution manager realises that they are insolvent during the winding up of the LLP. Regulation 13(1) provides that Part 4 applies to insolvent LLPs.
70. Because insolvency requires provisions to ensure that the creditors of the LLP are treated fairly a separate set of rules are necessary to deal with such circumstances.
71. Regulation 14 sets out similar provisions to those in Regulation 9 by providing for the appointment initially of a dissolution manager whose functions in this case are strictly limited. One of the duties of the dissolution manager of an apparently solvent or potentially insolvent LLP is to inform the registrar within 7 days if he becomes aware or forms the opinion that the LLP is insolvent under Regulation 15(1)(a).
72. The dissolution manager must call a meeting of all known creditors of the LLP within 28 days of the notice being sent to the registrar, and make a statement of the affairs of the LLP to be considered at the creditors' meeting. Under Regulation 15(4) the dissolution manager shall take no action without the Court's sanction and must protect and preserve the LLP property leading up to the date of the creditors' meeting.
73. Regulation 17 provides for the appointment of an insolvency manager by the creditors. The creditors may nominate an insolvency manager under Regulation 17(1). It is necessary for there to be a majority in value of the votes of the creditors who actually do vote on the resolution under Regulation 16(6) for the resolution appointing the nominee to be passed. If the creditors do not nominate an insolvency manager, the dissolution manager's nominee is appointed. The appointment takes effect from the end of the creditors' meeting. However, if no-one is appointed, the dissolution manager, a partner or a creditor may apply to the Court for an insolvency manager to be appointed under Regulation 17(3).

74. An insolvency manager must be an individual and a member of one of the professional bodies as set out in Regulation 48.
75. Regulation 19 provides for the insolvency committee or the Court to determine the remuneration of the insolvency manager, and provides for the removal and reappointment of an insolvency manager by the creditors' meeting or by the Court.
76. The duties and responsibilities of the dissolution manager cease from the date of the insolvency manager's appointment under Regulation 17(4). Under Regulation 17(4) and (5), where the partnership has ceased to comprise two or more partners, any property that had previously vested in the dissolution manager (see paragraph 65 above) now vests by statute in the insolvency manager and any proceedings against the LLP or dissolution manager may only be continued or commenced against the insolvency manager.
77. Under Regulation 13(2) the insolvency manager is defined as the person appointed to be responsible for the winding up of an insolvent LLP. The powers and duties of an insolvency manager are set out in Regulation 30. The insolvency manager shall pay the debts of the LLP in accordance with the rules set out in the Draft Regulations and with the sanction of the Court or the insolvency committee may pay a class of creditors in full or compromise any claim. The insolvency manager may take such other steps as are required in order to achieve the beneficial winding up of the LLP's affairs. Where there are questions relating to the winding up or the powers of the insolvency manager, the insolvency manager may seek the guidance of the Court, by making an application under Regulation 21.
78. In an insolvent winding up, Regulation 22 provides that in most cases the same rules apply as if a declaration of *désastre* has been made under the Bankruptcy (*Désastre*) (Jersey) Law 1990. Under Regulation 21(1)(b), the Court may also grant the insolvency manager the powers that the Court or the Viscount may exercise if a declaration had been made. Where creditors agree an arrangement, such is binding providing that it is agreed by at least three-quarters of those in number and those entitled to vote under Regulation 23(1), subject to a right of appeal to protect minority interests.



79. The insolvency manager may disclaim any onerous property under Regulation 31, may apply to the Court to recover property where there has been a transaction at an undervalue or a preference under Regulation 34, can apply to the Court to recover property from a partner where the Court finds that there is responsibility for wrongful trading or fraudulent trading under Regulations 35 and 36, or from a party who has benefited from an extortionate credit transaction under Regulation 37 and may seek the delivery or transfer of the property that belongs to the LLP to the insolvency manager under Regulation 39.
80. As with the dissolution manager there is a regime for settling accounts during the winding up, after which any LLP property remaining is distributed equally to the partners subject to the terms of the partnership agreement under Regulation 24. Following the completion of the winding up of the affairs of the LLP, the insolvency manager reports to the partners and the creditors at separate meetings under Regulation 26. Then under Regulation 27, the insolvency manager delivers to the registrar a statement that the above meetings have been duly held and their dates, and a copy of his report of the winding up.

**Question 11:**

**Are there any improvements that could be made to the Draft Regulations concerning the solvent and insolvent winding up of LLPs?**

**Record-keeping requirements**

81. The general record-keeping requirement is set by permitting the registrar to destroy records in the registrar's possession or control 10 years after the date of cancellation in Article 31(1). Article 31(2) then extends the same protection to all other parties who destroy records after 10 years from the date of cancellation by removing any duties to maintain records.
82. In an insolvent winding up, the requirement for retaining records is set in practice as a long stop of 10 years from the date of the cancellation of the registration of the LLP under Regulation 53(3).

### **Next steps**

83. Following the completion of the period of consultation, any final changes will be made to the Draft Law and Draft Regulations as a result of responses and the Draft Law and Regulations then lodged for debate.

### **Questions**

**Particular questions as stated above are:**

#### **Question 1:**

**Do you agree that partners should be able to contribute capital to the partnership, as an alternative or in addition to the existing requirements to contribute effort and skill, in order to qualify as a partner? If you think that there are any drawbacks with this approach please state what they are.**

#### **Question 2:**

**Do you agree that the appropriate time for a change of name to take effect is on the certificate being issued by the Registrar?**

#### **Question 3:**

**Is it appropriate for the LLP to be able to claim back the increased value of property that has been withdrawn in breach of a solvency statement in certain circumstances? If your answer is no, then please state why.**

**Question 4:**

Article 5 has provisions which reflect the 1997 Law concerning the quantum of liability when the LLP wishes to reclaim drawings from a partner other than in the ordinary course of the affairs of the partnership. Article 12, has different provisions regarding quantum if there is a breach of Article 12 where drawings are made without a current specified solvency statement. In summary, under Article 12 where the partner withdrew cash then interest is payable, and where the property was other than cash and the property is no longer available, the LLP may elect to receive a sum equal to any increased rise in value. Should liability be standardised in these two provisions?

If yes then state which approach should be taken.

**Question 5:**

Do you agree with the policy as stated in the notes and the draft regarding the interplay between Article 5 and 12? If your answer is no, then please state why.

**Question 6:**

Bearing in mind on the one hand the need for flexibility, and on the other the requirements for accounting records to be accessible, do you have any objections to the steering group's proposal that the designated partner is replaced by a Jersey regulated secretary or a Jersey resident secretary (in the case of an individual who is a partner)?

If there are objections please state your reasons and what your preferred alternative would be stating reasons for your views.

**Question 7:**

Are the transitional provisions appropriate? If your answer is no, please state why.

**Question 8:**

**Are the transitional provisions for the replacement of the designated partner with a secretary adequate? If your answer is no, please state why.**

**Question 9:**

**Should the length of time be standardised at 21 days, 28 days or variations made for the activities required to be undertaken depending on what is required? Please explain your answer.**

**Question 10:**

**Is there any reason why an LLP should not be reinstated following cancellation? Is it desired to permit an LLP to be reinstated both to a dissolved but not cancelled state, as well as a full reinstatement i.e. where both the certificates of cancellation and dissolution are declared void?**

**Question 11:**

**Are there any improvements that could be made to the Draft Regulations concerning the solvent and insolvent winding up of LLPs?**



Jersey

## **DRAFT LIMITED LIABILITY PARTNERSHIPS (JERSEY) LAW 201-**

### **REPORT**

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## **CONSULTATION DRAFT ONLY – NOT READY FOR LODGING**

### **Explanatory Note**

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The Limited Liability Partnerships (Jersey) Law 201- (the “Law”) replaces the Limited Liability Partnerships (Jersey) Law 1997. It provides for the establishment, dissolution and winding up of limited liability partnerships, for their registration and for connected purposes.

Part 1 of the Law comprises *Article 1*, which sets out definitions of the terms used in the Law.

Part 2 of the Law sets out the essential elements of a limited liability partnership.

*Article 2* provides that an association of persons cannot be a limited liability partnership until it has been registered under *Article 18(4)* and, except as provided for in Regulations made under *Article 38(1)* (which will set out what happens upon dissolution of the limited liability partnership – “dissolution Regulations”), it ceases to be a limited liability partnership upon the cancellation of its registration under *Article 23*.

An association of persons may be registered as a limited liability partnership where those persons wish to carry on a business with a view of profit have agreed (with or without other terms) –

- (a) that the business will be carried on in the form of a limited liability partnership from the date it is registered;
- (b) that they shall each contribute capital or effort and skill to the business but only in a way that constitutes them as agents of the limited liability partnership but not of each other, in accordance with *Article 17* (see later); and
- (c) that the profits of the business will be divided between them and they will each have an interest in those profits and in the limited liability partnership

property to the extent described in the partnership agreement, the Law and the dissolution Regulations.

Article 2(2) and 2(3) of the Law provides that the registration of a limited liability partnership has the effect of creating the limited liability partnership. The registration has effect from the issue of a certificate of registration and does not cease to have effect except as provided for in Regulations or when the registration is cancelled.

*Article 2(4)* provides that except as provided in dissolution Regulations a limited liability partnership is a legal person (but not a body corporate) and is distinct from the partners of whom it is for the time being composed. Any contract which binds the limited liability partnership is made only with that legal person and any change in the persons who are partners in the limited liability partnership will not affect the existence, rights or liabilities of that legal person. By *Article 2(5)*, a change in the partnership does not limit the circumstances in which a limited liability partnership is or may be dissolved, whether in accordance with the partnership agreement or otherwise. There is no restriction on the number of persons that may be partners in a limited liability partnership, or on who may be a partner in a limited liability partnership.

*Article 2(6)* provides for each partner in a limited liability partnership to have, subject to this Law and to the partnership agreement, an interest in the profits of the limited liability partnership and, in accordance with Regulations made under *Article 38(1)(a)* (relating to the settling of accounts on winding up), in the limited liability partnership property.

*Article 3* defines limited liability partnership property. It consists of all property (as defined in *Article 1*) brought into the limited liability partnership or created or acquired by or on account of the limited liability partnership either in the course of its business or with its money. Limited liability partnership property is vested in the limited liability partnership or held by any person on its behalf and continues to be so vested, subject to the partnership agreement and except as provided in dissolution Regulations, notwithstanding any change in the partners.

*Article 4* provides that a limited liability partnership is liable for any debt or loss for which, if the limited liability partnership were an ordinary partnership, the partners would otherwise be liable, either jointly or jointly and severally. Any such liability is to be met out of the limited liability partnership property.

*Article 5* provides that a partner or former partner in a limited liability partnership will not be liable for any debt or loss of the limited liability partnership, including any debt of, or loss caused by the act of, another partner in, the limited liability partnership. However, a partner or former partner's liability for personal debts, or for losses caused by the partner or former partner to the limited liability partnership, is unaffected. A partner or former partner will also be liable for any debt or loss of the limited liability partnership where any limited liability partnership property, including a share in the limited liability partnership profits, has been withdrawn by that partner (or former partner) other than in the ordinary course of the affairs of the limited liability partnership, or in any circumstances set out in dissolution Regulations, and will remain so liable even after the limited liability partnership's registration has been cancelled. Liability is limited to an amount equal to the value of the withdrawal by the partner or former partner less any amount previously recovered from the partner or former partner in respect of that withdrawal.

*Article 6* requires the name of a limited liability partnership to end with the words "Limited Liability Partnership", although the abbreviation "LLP" or "L.L.P." may be used instead. The abbreviation may also be used by any other person, where it would

be convenient to do so and not misleading, in any reference to a limited liability partnership in any document issued. A limited liability partnership may change its name, but the change will not take effect until the registrar has issued a certificate in respect of it. The registrar may refuse to register a name that the registrar considers to be misleading or otherwise undesirable and may issue a direction to a limited liability partnership to change its name if the registrar considers it to be misleading or otherwise undesirable. A direction may be set aside or confirmed by the Court upon the application of the limited liability partnership. A change of name in no way affects any rights or obligations of the limited liability partnership nor renders defective any legal proceedings by or against it. A change of name certificate must be delivered to the Judicial Greffier where a limited liability partnership has its name inscribed in the Public Registry as being the holder of, or having an interest in, immovable property. A limited liability partnership must have its name, the number or other identifying code assigned to it by the registrar on registration (if any) and the words “registered as a limited liability partnership in Jersey” clearly stated on all its business letters, statements of account, invoices, order forms, notices and other official publications, and on negotiable instruments and any letters of credit signed on behalf of the limited liability partnership. No person may carry on a business under a name or title which includes the words "limited liability partnership" or any contraction of those words, unless the person is a limited liability partnership under the Law, or under a law of another jurisdiction (see later at *Article 33*.)

*Article 7* requires a limited liability partnership to have a registered office in Jersey and any change of address of the registered office only takes effect after the registrar has provided a certificate in respect of the change. *Article 7(6)* lists the documents that the limited liability partnership must keep at its registered office. They must all be available, during the ordinary office hours of the limited liability partnership, for inspection and copying without charge to a partner or the secretary. The list of partners that is required to be kept must be amended within 28 days after any change in the particulars contained in it. The limited liability partnership must also send the registrar a copy of the list of partners and any other document listed, if requested to do so by the registrar.

*Article 8* requires every limited liability partnership to appoint a secretary from the date of registration. It may also appoint a deputy secretary to carry out a function of the secretary when, for any reason, the secretary is unable to carry out that function. The secretary, or a deputy secretary as the case may be, must be either a company that is a partner in the limited liability partnership and has a registered office in Jersey; a company that is registered under Part 2 of the Financial Services (Jersey) Law 1998 to carry on trust company business that permits the provision by that company of the services mentioned in Article 2(4)(e) of that Law; an individual who is ordinarily resident in Jersey and a partner in the limited liability partnership; or an individual who is registered under Part 2 of the Financial Services (Jersey) Law 1998 to carry on trust company business that permits the provision by that individual of the services mentioned in Article 2(4)(e) of that Law.

By *Article 8(2)*, the duty to appoint a secretary under this Article shall cease only upon cancellation of a limited liability partnership’s registration under Article 23 or in any circumstances described in Regulations made under Article 38(1) concerning the secretary’s appointment.

*Article 9* sets out the duties of a limited liability partnership secretary in relation to the keeping of records of the limited liability partnership and permitting access to them for inspection by any partner of the limited liability partnership.

*Article 10* requires a limited liability partnership to take reasonable precautions to prevent loss or destruction of the records they are required to keep, to prevent falsification of entries in them and to detect and correct inaccuracies in them. The secretary is required to take reasonable steps to prevent loss or destruction of the records it is required to keep, to prevent the falsification of entries and to facilitate the detection and correction of inaccuracies in the records.

*Article 10(2)* requires each partner of a limited liability partnership to take reasonable steps to ensure that the limited liability partnership's records are prepared and kept properly and accurately and that, in particular, they contain entries of all sums of money received and expended by the limited liability partnership, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the limited liability partnership, including any interests held by the limited liability partnership in any other legal person or arrangement.

*Article 10(5)* describes the form in which the records must or may be kept and provides that the duties in relation to the keeping of the records and the prevention of their loss or destruction or falsification extends to any former secretary until such time as the limited liability partnership documents are transferred to the newly appointed secretary.

*Article 11* provides that, subject to the partnership agreement or any provision in Regulations providing for the auditing of limited liability partnerships, it is not necessary for a limited liability partnership to appoint an auditor or to have its accounts audited. By *Article 11(2)*, a limited liability partnership must keep accounting records and returns of the limited liability partnership that are sufficient to show and explain the limited liability partnership's transactions and be such as to disclose with reasonable accuracy at any time the financial position of the limited liability partnership at that time. By *Article 11(3)*, a limited liability partnership whose accounting records are kept in Jersey may provide its secretary with those records at any time, but must so provide them within one month of the end of the limited liability partnership's accounting period. In the case of a limited liability partnership whose accounting records are kept outside Jersey, the limited liability partnership is required to provide its secretary with the accounting records of the limited liability partnership, at not more than 6 monthly intervals. *Article 11(6)* gives the Chief Minister power to make an Order prescribing the accounting records and returns that must be kept, their form and content and any other documents or information that must be kept with those records or returns. By *Article 11(7)*, the first accounting period of a limited liability partnership may be up to 18 months and thereafter the accounting period must be not more than 18 months beginning at the end of the period covered by the most recent accounts.

*Article 12(1)* defines "specified solvency statement". This is a statement made by the limited liability partnership in which it states its opinion, having regard to the prospects of the limited liability partnership and the intentions of the partners who control the management with respect to the management of the limited liability partnership's business, and the amount and character of the financial resources that will be available to the limited liability partnership, whether the limited liability partnership will be able to continue to carry on business and discharge its liabilities as they fall due, until the expiry of the period of 12 months immediately following the date of the specified solvency statement or until the limited liability partnership is dissolved. The limited liability partnership is treated as having made a specified solvency statement if one or more of its partners who control its management signs a statement described in *Article 12(1)* on behalf of the limited liability partnership.



A limited liability partnership is not obliged to make a specified solvency statement but if it does make one it must send a copy of it to its secretary within 28 days of making it. It is an offence for a limited liability partnership to permit a partner to withdraw any limited liability partnership property at any time when the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal. Also, where a partner or former partner withdraws any limited liability partnership property at any time when the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal, or has made a withdrawal at a time when the limited liability partnership has made a specified solvency statement without having reasonable grounds for the opinion made in the statement, the partner will be liable to return the property to the limited liability partnership; or to pay to the limited liability partnership a sum equal to the value of the property at the date of repayment. If the partner or former partner is liable to pay cash to the limited liability partnership, the partner or former partner shall also be required to pay interest at a rate prescribed by the Chief Minister on the sum repaid. It is an offence for a limited liability partnership or one of its partners to make a specified solvency statement without having reasonable grounds for having the opinion expressed in that statement. *Article 12(8)* describes the limited circumstances when a partner's liability to repay under this Article may be extinguished and *Article 12(9)* makes it clear that where liability arises under *Article 12(5)*, there will be no liability under *Article 5* unless there are additional circumstances surrounding the withdrawal, other than those in *Article 12(5)*, that creates a liability under *Article 5*.

Part 3 of the Law describes the relationship of the partners in a limited liability partnership with one another and third parties.

*Article 13* provides that, subject to Parts 2 to 5, the rights and duties of the partners in a limited liability partnership shall, as between themselves, be determined by the partnership agreement. However, nothing in the partnership agreement may deprive the partners of the benefit of the provisions in *Article 5* which limit the liability of the partners, although the partners may still, as amongst themselves, indemnify any of them or any former partner in respect of any debt or loss.

*Article 14* permits a partner in a limited liability partnership (subject to any terms in the partnership agreement to the contrary) to enter into any transaction with the limited liability partnership, including lending money to, and borrowing money from, it.

*Article 15* provides that additional partners are not to be admitted to a limited liability partnership except in accordance with the partnership agreement and, except as described in dissolution Regulations, a partner may only retire from a limited liability partnership in accordance with the partnership agreement.

By *Article 16* a partner in a limited liability partnership may not assign, transfer or otherwise dispose of the whole or part of the partner's partnership interest except in accordance with the partnership agreement. Under *Article 16(2)* changes may be made in the partnership interests in a limited liability partnership on the admission or retirement of a partner, on the death of a partner, on a partner who is not an individual ceasing to exist, or in accordance with the partnership agreement.

*Article 17* provides that a partner in a limited liability partnership is not an agent of the other partners in that limited liability partnership, but that every partner in a limited liability partnership is the agent of the limited liability partnership. Accordingly, the acts of a partner in the partner's capacity as a partner shall bind the limited liability partnership except where the partner is not acting as a partner or is acting without

authority and the person with whom the partner is dealing knows or should know that to be the position. *Article 17(4)* provides that a partner is not acting with authority unless the partner is acting in the ordinary course of the business of the limited liability partnership or with express authority conferred by or pursuant to the partnership agreement.

Part 4 of the Law describes the registration and dissolution processes that apply to a limited liability partnership.

*Article 18* provides that an application for registration as a limited liability partnership must be in the form of a declaration, signed by a person authorized to sign by every person who is, on registration, to be a partner, and must be delivered to the registrar in such form as the registrar may reasonably require. *Article 18(2)* describes the content of the declaration and gives the Chief Minister power to prescribe other information that must be provided. *Article 18(3)* provides for the Chief Minister to prescribe other documentation that must be delivered, with the declaration. Upon receipt of an application complying with the requirements of *Article 18*, and complying with the requirements in Articles 6 and 7 as to the name and address of the proposed limited liability partnership, the registrar must register the limited liability partnership and issue a certificate specifying the date on which registration of the limited liability partnership takes effect (which must be the date on which the certificate is issued) and the number or other identifying code of the limited liability partnership.

*Article 19* requires the limited liability partnership within 28 days after any change in the information stated in the declaration, to send to the registrar a statement specifying the change.

*Article 20* requires the secretary to deliver an annual return to the registrar stating whether the secretary has received a copy of any specified solvency statement on or after the 1st March of the previous year; and whether the limited liability partnership has indicated that it has provided all the accounting records it is required to provide to its secretary under *Article 11*. The secretary must deliver to the registrar with the annual return any specified solvency statement that has been made on or after the 1st March of the previous year. The requirement to deliver an annual return does not apply in the case where a limited liability partnership is the subject of a declaration made under Article 6 of the Bankruptcy (Désastre) (Jersey) Law 1990.

*Article 21* provides that an error in the declaration, annual return or any statement delivered to the registrar pursuant to the Law, or any default in the delivery of any such document required to be delivered will not affect the validity of the registration of a limited liability partnership, and that a certificate issued under *Article 18(4)* is conclusive evidence as to the registration of a limited liability partnership.

*Article 22* describes the registrar's procedures with regard to dissolution, including the notices it must serve on a limited liability partnership and publish, and the notice periods that must be observed, before it can dissolve the limited liability partnership. The circumstances in which a limited liability partnership may be dissolved include where the limited liability partnership is not carrying on business, does not have a registered office in Jersey, has failed to appoint a secretary in compliance with *Article 8*; has failed to send to its secretary any accounting record required to be sent under *Article 11*; where its secretary has failed to deliver to the registrar any annual return in compliance with *Article 20* or where it has failed to pay a fee required to be paid under the Law. *Article 22(9)* provides for the dissolution Regulations to set out other circumstances when the registrar must or may issue a certificate of dissolution or publish a notice in respect of the limited liability partnership. *Article 22(6)* enables the Court to make an order, in circumstances described in Regulations made under

Article 38(1), on such terms as the Court thinks fit declaring the certificate of dissolution to be void. In making an order under this Article, the Court may give directions and make provisions in relation to the dissolved limited liability partnership, including directions and provisions placing the limited liability partnership and all other interested persons in the same position as nearly as may be as if the limited liability partnership had not been dissolved.

*Article 23* requires the registrar to cancel the entry in the register relating to the limited liability partnership and issue a certificate of cancellation of registration where the registrar has been notified of the completion of the winding up of the limited liability partnership pursuant to dissolution Regulations or has been notified under Article 36(3) of the Bankruptcy (Désastre) (Jersey) Law 1990. The States may by Regulations provide for the cancellation of registration of a limited liability partnership in any other circumstances. On cancelling a limited liability partnership's registration the registrar must publish a notice of that fact. *Article 23(5)* enables the Court to make an order, in circumstances described in Regulations made under Article 38(1), on such terms as the Court thinks fit declaring the cancellation of registration to be void. In making an Order under this Article the Court may give such directions and make such provisions as seem just, including directions and provisions for placing the limited liability partnership and all other persons in the same position as nearly as may be as if the registration of the limited liability partnership had not been cancelled.

Part 5 of the Law contains miscellaneous and general provisions.

*Article 24* provides that, except as provided in dissolution Regulations, legal proceedings by or against a limited liability partnership must be instituted by or against the limited liability partnership, and any judgment must be made in such proceedings in favour of or against the limited liability partnership. Also, a judgment may not be enforced against any limited liability partnership property unless such judgment has been made against the limited liability partnership. This, however, does not affect any right of a judgment creditor of a partner in a limited liability partnership to enforce against that partner's partnership interest and any sum due to the partner from the limited liability partnership by way of repayment of a loan. *Article 24(4)* makes provision for the other partners to intervene in such circumstances, and prevent or stop enforcement against those assets by paying to the creditor whichever is the lesser of the amount for which enforcement is sought and an amount equal to the value of the first mentioned partner's partnership interest, together with any sum due to the partner from the limited liability partnership by way of repayment of a loan. (The value of the limited liability partnership property may be determined by the Court for these purposes.) *Article 24(6)* limits the execution to enforce a judgment obtained against a limited liability partnership so that it is only capable of being issued against and satisfied out of the limited liability partnership property as at the date of such execution (no account being taken of any changes in the partners composing the limited liability partnership prior to such date). *Article 24(7)* describes when a person may join or otherwise institute proceedings against a limited liability partnership.

*Article 25* describes how service of documents may be effected under the Law and gives power to the Chief Minister to make provision by Order for service by other methods.

*Article 26* provides that where a person who is required by the Law to sign, deliver or permit inspection or copying of any document fails to do so, a person who is aggrieved by the failure may apply to the Court for an order directing that person to comply with the Law and enables the Court to make such order as it considers

appropriate in the circumstances. This is in addition to any criminal sanctions for such failure.

*Article 27(1)* confirms that the registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991 is the registrar of limited liability partnerships. *Article 27(2)* requires the registrar to maintain a register of limited liability partnerships and record in it any declaration, return, statement or copy delivered to the registrar and the issue of any certificate by the registrar pursuant to the Law. The Article requires any certificate issued by the registrar under the Law to be signed by the registrar and sealed with the registrar's seal (if any) and permits the Commission to direct a seal or seals to be prepared for the authentication of documents required for or in connection with the registration of limited liability partnerships. Any functions of the registrar under the Law may, to the extent authorized by the registrar, be exercised by an officer on the staff of the Commission.

*Article 27(6)* and *(7)* give the registrar the power to remove from the register material of a description specified in the Regulations that derives from anything invalid or ineffective or that was done without the authority of the limited liability partnership or is inaccurate, or is derived from something that is inaccurate or forged. Before exercising this power the registrar must publish its policy as to who may make an application and what is to be included in the application, any notice to be given and any period allowed for the making of objections, how an application may be determined and the appeal process that will apply where a person is aggrieved by the registrar's decision to remove material.

By *Article 28* the Commission may require the payment to it of an annual administration fee, and fees in respect of the performance by the registrar of his or her functions under the Law or a charge for the provision by the registrar of any service or assistance, or a document or information. By *Article 28(2)*, the States may make Regulations imposing a further annual amount. By *Article 28(9)* the Commission may publish forms and other documents to be used for any of the purposes of the Law together with details of the manner in which any such document to be delivered to the registrar is to be authenticated. By *Article 28(10)* a fee is payable if it has been published and is in effect in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998.

*Article 29* permits any person to inspect any document delivered to the registrar under the Law and kept by the registrar and permits any person to have a certificate or a copy of any certificate issued by the registrar under the Law and of all or part of any other document kept by the registrar. By *Article 29(3)*, the registrar may publish details of the times during which, and the manner by which, a document may be inspected or issued under this Article.

*Article 30* gives the Court the power to make an order in respect of the production and inspection the records for the purpose of the Attorney General investigating and obtaining evidence of an offence believed to have been committed by a person while that person was a partner or secretary in connection with the management of the limited liability partnership's affairs.

*Article 31* permits the registrar to destroy any record or document relating to a limited liability partnership any time after 10 years from the date of dissolution.

*Article 32* provides that where criminal proceedings are instituted against any person, nothing in this Law is to be taken to require any person to disclose any information which the person is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the court.

Under *Article 33* the Judicial Greffier must register in the Public Registry all Acts and orders affecting immovable property made under the Law.

*Article 34(1)* provides for it to be an offence for a person to make a statement in any document, material, evidence or information which is required to be delivered to the registrar under the Law that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact the omission of which makes the statement false or misleading. A person shall not be guilty of the offence if the person did not know that the statement was false or misleading and with the exercise of reasonable diligence could not have known that the statement was false or misleading.

*Article 34(3)* provides for it to be an offence for a person to carry on a business under a name or title which includes the words “limited liability partnership” or any contraction of those words, unless the person is registered as a limited liability partnership under this Law or otherwise established as a limited liability partnership in another jurisdiction.

*Article 34(4)* provides for it to be an offence for a person wilfully to take or use any name, title, addition or description implying that the person is a partner in a limited liability partnership when the person is not, or implying that the person is a partner in a partnership which is not a limited liability partnership when the partnership is a limited liability partnership.

*Article 35* sets out the circumstances when partners, directors and officers of a body corporate, a separate limited partnership or a limited liability partnership or other partnership with separate legal identity may be criminally liable where an offence under the Law is proved against such a body corporate or partnership.

*Article 36* sets out the penalties that apply in relation to offences under the Law.

The maximum penalty for the following offences shall be a fine at level 4 on the standard scale –

*Article 6(13)*: Failure by a limited liability partnership to comply with a direction of the registrar to change the name of the limited liability partnership as required under *Article 6(5)*; failure to deliver to the Judicial Greffier a certificate of change of name of the limited liability partnership as required by *Article 6(10)*; or failure by the limited liability partnership to have its name, registration number or other identifying code and the words “registered as a limited liability partnership in Jersey” on its correspondence and other public documents, as required by *Article 6(12)*;

*Article 7(11)*: Failure by a limited liability partnership to keep records at its registered office, as required under *Article 7(6)*; failure to list the partners in alphabetical order where the limited liability partnership has more than 25 partners, as required by *Article 7(7)*; failure to make documents available for inspection or copying, as required under *Article 7(8)(b)*; failure to amend the list of partners within 28 days of any change, as required under *Article 7(9)*; and failure to send any copies of documents to the registrar as required by *Article 7(10)*;

*Article 8(5)*: Failure by a limited liability partnership to appoint a secretary upon registration, or a new secretary upon a secretary’s appointment ceasing, as required by *Article 8(1) or (4)*;

*Article 9(4)*: Failure by a limited liability partnership’s secretary to keep records in accordance with *Article 9(1)*, failure by the secretary to permit access to them by any partner in accordance with *Article 9(2)*; failure by the secretary to keep a copy of any document that the secretary sends to the registrar or Commission, as required by *Article 9(3)*;

*Article 10(6)*: Failure by a limited liability partnership to take reasonable precautions to prevent loss or destruction or falsification of documents or facilitate detection and rectification of errors in documents, as required by *Article 10(1)*;

*Article 10(7)*: Failure by a partner to keep records properly and accurately as required by *Article 10(2)*;

*Article 10(8)*: Failure by a limited liability partnership's secretary to take reasonable precautions to prevent loss or destruction or falsification of documents or facilitate detection and rectification of errors in documents as required by *Article 10(3)*;

*Article 10(9)*: Failure by a limited liability partnership's former secretary to retain all documents and to deliver them to the newly appointed secretary as required by *Article 10(4)*;

*Article 11(5)*: Failure by a limited liability partnership to provide its secretary with accounting records or returns, required to be submitted under *Article 11(2)*, *11(3)* or *11(4)*;

*Article 12(4)*: Limited liability partnership permitting withdrawal of partnership property when a specified solvency statement has not been made in the 12 months immediately preceding the withdrawal;

*Article 19(3)*: Failure by a limited liability partnership to provide the registrar with a statement of change in information in a declaration within 28 days of the change, as required by *Article 19(1)*;

*Article 20(4)*: Failure by a limited liability partnership's secretary to deliver the annual return to the registrar, as required by *Article 20(1)*; or to deliver any specified solvency statement, as required by *Article 20(3)*;

*Article 23(8)*: Failure by a person who made an application to the Court to send the Court's Act to the registrar within 14 days, as required by *Article 23(7)*.

The maximum penalty for the following offences shall be an unlimited fine and 2 years imprisonment –

*Article 12(12)*: A limited liability partnership making a specified solvency statement without having reasonable grounds for having the opinion expressed in that statement;

*Article 12(13)*: A partner signing a specified solvency statement without having reasonable grounds for having the opinion made in the statement;

*Article 34(1)*, *34(3)* and *34(4)*: A person giving false or misleading information etc. to the registrar (see above paragraph on *Article 34*).

*Article 37* limits the liability of the States, the Chief Minister, the Commission and the registrar for anything done or omitted in the discharge or purported discharge of their functions unless it is shown that the act or omission was in bad faith.

*Article 38(1)* gives power to the States to make Regulations in respect of the dissolution and winding up of solvent or insolvent limited liability partnerships, including the settling of accounts on winding up (referred to earlier in this explanatory note as "dissolution Regulations"); the recognition of proceedings in other jurisdictions; and the audit of limited liability partnerships, including provision as to the qualifications for auditors, their registration, appointment, functions, powers, duties, status and immunities, ineligibility and disqualification of persons for appointment as auditors, the disciplinary control of auditors (including the suspension and revocation of registration), and the suspension and removal of persons appointed as auditors of particular limited liability partnerships. It also gives power to make Regulations generally to give effect to this law or Regulations made under this Law.

Regulations made under the Law may provide for the Chief Minister or Commission to exercise a discretion in respect of matters provided for in the Regulations; make different provision for different cases and contain such incidental, supplemental and transitional provisions as appear to the States to be necessary or expedient.

*Regulation 38(4)* gives the States power to amend Articles 1, 7 to 12, 18 to 20, 22, 23, 25, and 27 to 30.

Regulations may create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine.

*Article 39* gives the Chief Minister power to make an Order prescribing any matter which is to be prescribed under the Law. An Order may make different provision for different cases and contain such incidental, supplemental and transitional provisions as appear to the Chief Minister to be necessary or expedient. By *Article 38(3)* the Chief Minister must consult the Commission before making any Orders under the Law.

*Article 40* provides that the power to make Rules of Court under the Royal Court (Jersey) Law 1948 includes a power to make Rules for the purposes of the Law.

*Article 41* provides that nothing in the Law affects any duty arising in respect of partners that are subject to the rules or laws of Jersey in respect of their profession as a solicitor, advocate, accountant or other profession.

*Article 42* provides that the rules of customary law applicable to a partnership apply to a limited liability partnership except in so far as they are inconsistent with the express provisions of the Law.

*Article 43* introduces the Schedule of amendments and repeals and enables the States, by Regulations, to make provision in this or any other Law for any transitional matter connected with the repeal of the Limited Liability Partnerships (Jersey) Law 1997 or the coming into force of this Law.

*Article 44* cites the Law as the Limited Liability Partnerships (Jersey) Law 201- and provides that it shall come into force on such day or days as the States may by Act appoint.

The Schedule sets out the amendments of other enactments consequential upon the making of the Law, and repeals the Limited Liability Partnerships (Jersey) Law 1997.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.



Jersey

## DRAFT LIMITED LIABILITY PARTNERSHIPS (JERSEY) LAW 201-

### Arrangement

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Jersey

## DRAFT LIMITED LIABILITY PARTNERSHIPS (JERSEY) LAW 201-

A **LAW** to make provision for the establishment, dissolution and winding up of limited liability partnerships, for their registration and for connected purposes.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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### PART 1

#### PRELIMINARY

##### 1 Interpretation

- (1) In this Law, unless the context otherwise requires –
- “annual return” shall be construed in accordance with Article 20;
  - “Commission” means the Jersey Financial Services Commission established under the Financial Services Commission (Jersey) Law 1998;
  - “Court” means the Royal Court;
  - “debt” includes obligation;
  - “declaration” means a declaration made under Article 18;
  - “limited liability partnership” shall be construed in accordance with Article 2;
  - “limited liability partnership property” shall be construed in accordance with Article 3(1);
  - “loss” includes damage and injury;
  - “partner” means, in relation to a limited liability partnership, any person who is a partner in that partnership;

“partnership agreement” means any agreement of the partners as to the affairs of a limited liability partnership and the rights and obligations of the partners among themselves;

“partnership interest” means, in relation to a partner in a limited liability partnership, the partner’s share of the profits and losses of the limited liability partnership and the partner’s right to receive distributions of the limited liability partnership property, including any sum due to the partner and for the time being retained in the limited liability partnership otherwise than by way of a loan, together with any other benefit conferred by the partnership agreement other than any liability of the limited liability partnership to the partner by way of loan;

“prescribed” means prescribed by Order made by the Chief Minister;

“property” means land, money, goods, things in action, goodwill, and every valuable thing, whether movable or immovable, and whether situated in Jersey or elsewhere, and also means obligations, servitudes, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incidental to property;

“register” means the register maintained pursuant to Article 27(2);

“registrar” shall be construed in accordance with Article 27(1);

“retirement” means any act or occurrence whereby a person ceases to be a partner in a limited liability partnership other than by, where the person is an individual, the person’s death or, where the person is not an individual, its ceasing to exist;

“secretary” means the secretary appointed in accordance with Article 8 and any reference to a secretary in this Law or in any Regulations or Order made under this Law includes a person carrying out any of the functions of the secretary;

“specified solvency statement” has the meaning given to it in Article 12.

- (2) For the purposes of this Law, any reference to a loan includes any payment of interest on the loan which has fallen due.
- (3) In this Law, any requirement to give the name and address of any person shall be construed as a requirement to give –
  - (a) where the person is an individual, the person’s full name and an address for service in Jersey;
  - (b) where the person is a body corporate, its full name, the place where it is incorporated and its registered office;
  - (c) where the person is a limited liability partnership, its name, as it appears in its declaration, and its registered office, and  
in any other case its full name and registered office or, if it has no registered office, the person’s principal place of business.
- (4) Any reference to a form, document or notice being published by the Commission or the registrar, as the case may be, shall be construed as being a reference to that form, document or notice being published in a manner that is likely to bring it to the attention of any person affected by it.

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## PART 2

### ESSENTIALS OF A LIMITED LIABILITY PARTNERSHIP

#### 2 Limited liability partnership

- (1) An association of persons may be registered as a limited liability partnership where those persons wish to carry on a business with a view of profit and have agreed (with or without other terms) –
  - (a) that the business shall be carried on in the form of a limited liability partnership from the date it is registered under Article 18(4);
  - (b) that they shall each contribute capital or effort and skill to the business but only in a way that constitutes them as agents of the limited liability partnership but not of each other, in accordance with Article 17; and
  - (c) that the profits of the business shall be divided between them and that they shall each have an interest in the limited liability partnership property to the extent described in paragraph (6).
- (2) Registration of a limited liability partnership shall have effect from the issue of the certificate under Article 18(4) and, except as provided in Regulations made under Article 38(1), the registration shall cease to have effect upon its cancellation under Article 23.
- (3) An association of persons satisfying the requirements of paragraph (1) shall not be a limited liability partnership until the registrar has issued a certificate under Article 18(4).
- (4) Except as provided in Regulations made under Article 38(1), a limited liability partnership is a legal person (other than a body corporate) distinct from the partners of whom it is for the time being composed and accordingly (but without limitation) –
  - (a) any contract which binds the limited liability partnership is made only with that legal person; and
  - (b) any change in the persons who are partners in the limited liability partnership for the time being shall not affect the existence, rights or liabilities of that legal person.
- (5) Paragraph (4)(b) shall not be construed as limiting the circumstances in which a limited liability partnership is or may be dissolved, whether in accordance with the partnership agreement or otherwise.
- (6) Notwithstanding paragraph (4), each partner in a limited liability partnership has, subject to this Law and to the partnership agreement, an interest in the profits of the limited liability partnership and, in accordance with Regulations made under Article 38(1), in the limited liability partnership property.
- (7) Any person may be a partner in a limited liability partnership.
- (8) Any number of persons may be partners in a limited liability partnership.

**3 Limited liability partnership property**

- (1) Limited liability partnership property consists of all property –
  - (a) brought into the limited liability partnership; or
  - (b) created or acquired by or acquired on account of the limited liability partnership either in the course of its business or with its money.
- (2) Limited liability partnership property –
  - (a) shall be vested in the limited liability partnership or held by any person on its behalf; and
  - (b) subject to the partnership agreement, and except as provided in Regulations made under Article 38(1), shall continue to be so vested or held notwithstanding any change in the persons who are partners in the limited liability partnership for the time being.

**4 Liability of a limited liability partnership**

- (1) A limited liability partnership shall be liable for any debt or loss for which, if the limited liability partnership were an ordinary partnership, the partners would otherwise be liable, either jointly or jointly and severally.
- (2) There shall be available to meet any liability of a limited liability partnership its limited liability partnership property.

**5 Liability of a partner or former partner in a limited liability partnership**

- (1) Subject to paragraphs (2) and (3), a partner or former partner in a limited liability partnership shall not be liable for any debt or loss to which Article 4(1) applies, including any debt of, or loss caused by the act of, another partner in the limited liability partnership.
- (2) Paragraph (1) shall not affect any liability of a partner or former partner in a limited liability partnership for –
  - (a) the partner's or former partner's personal debts; or
  - (b) any loss caused by the partner or former partner for which that partner or former partner is personally liable.
- (3) A partner or former partner shall be liable for any debt or loss to which Article 4(1) applies where any limited liability partnership property, (which, for the purposes of this Article, includes any undistributed share in the limited liability partnership profits) is withdrawn by that partner other than in the ordinary course of the affairs of the limited liability partnership, or in any circumstances specified in Regulations made under Article 38(1).
- (4) Subject to Article 12(9), the liability under paragraph (3) shall be limited to an amount equal to the value of the withdrawal by the partner or former partner less any amount previously recovered from the partner or former partner in respect of that withdrawal, and in a case where the withdrawal was made in the circumstances described in Article 12(5), the aggregate amount recoverable from the partner or former partner under –

- (a) this Article; and
- (b) Article 12 or Regulations made under Article 38(1),

shall not exceed the maximum amount that the partner is liable to return to the partnership property (less any amount that has been previously recovered) under Article 12(6) or under Regulations made under Article 38(1), whichever amount is the higher.

- (5) This Article shall continue to apply to a person who was a partner or former partner in a limited liability partnership after the limited liability partnership's registration has been cancelled in accordance with Article 23.

## **6 Name of limited liability partnership**

- (1) Subject to paragraph (2), the name of a limited liability partnership shall end with the words "Limited Liability Partnership".
- (2) The abbreviation "LLP" or "L.L.P." in place of the words "Limited Liability Partnership" may be used –
  - (a) by a limited liability partnership in its name; and
  - (b) where it would be convenient to do so and not misleading, in any reference to a limited liability partnership in any document issued by any person.
- (3) Where the name to be registered in respect of a limited liability partnership is, in the opinion of the registrar, in any way misleading or otherwise undesirable, the registrar may –
  - (a) where the name is stated in the declaration, refuse to register the limited liability partnership and issue a certificate pursuant to Article 18(4);
  - (b) where the name is specified in a statement delivered pursuant to Article 19(1), refuse to register the name and issue a certificate in respect of it pursuant to Article 19(2);
- (4) If, in the opinion of the registrar, the name by which a limited liability partnership has been registered is misleading or otherwise undesirable, the registrar may direct the limited liability partnership to change it.
- (5) Subject to paragraph (6), the limited liability partnership shall comply with a direction under paragraph (4) within 3 months from the date of the direction or such longer period as the registrar may allow.
- (6) The limited liability partnership may, within 21 days from the date of a direction under paragraph (4), apply to the Court to set it aside and if such application is made the Court may set the direction aside or confirm it.
- (7) If the Court confirms the direction, the Court –
  - (a) shall specify a period, not being less than 28 days from the date the Court confirmed it, within which the limited liability partnership shall comply with the direction, and
  - (b) may order the registrar to pay the limited liability partnership such sum (if any) as it thinks fit in respect of the expenses to be incurred

by the limited liability partnership in complying with the direction where the Court is of the opinion that the registrar has acted negligently or in bad faith.

- (8) A change of name of a limited liability partnership shall take effect upon a certificate in respect of it being issued by the registrar pursuant to Article 19(2).
- (9) A change of name of a limited liability partnership does not affect any rights or obligations of the limited liability partnership or render defective any legal proceedings by or against it and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.
- (10) Where a limited liability partnership which has its name inscribed in the Public Registry as being the holder of, or having an interest in, immovable property changes its name, the limited liability partnership shall deliver to the Judicial Greffier a copy of the certificate issued by the registrar pursuant to Article 19(2) within 14 days after it is issued.
- (11) Upon delivery of the copy referred to in paragraph (10), the Judicial Greffier shall cause the new name to be registered in the Public Registry.
- (12) A limited liability partnership shall have clearly stated on all its business letters, statements of account, invoices, order forms, notices and other official publications, and on negotiable instruments and any letters of credit signed on behalf of the limited liability partnership –
  - (a) its name;
  - (b) the number or other identifying code assigned to it by the registrar on registration (if any); and
  - (c) the words “registered as a limited liability partnership in Jersey”.
- (13) A limited liability partnership that fails to comply with paragraph (5), (10) or (12) shall be guilty of an offence.

## **7 Registered office**

- (1) A limited liability partnership shall have a registered office in Jersey.
- (2) A limited liability partnership does not comply with paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being that use for that purpose.
- (3) Where the registrar is not satisfied that the occupier of the premises that are to be the registered office of the limited liability partnership authorizes their use as its registered office, the registrar may –
  - (a) where the address is stated in a declaration delivered pursuant to Article 18(1), refuse to register the limited liability partnership; and
  - (b) where the address is specified in a statement delivered pursuant to Article 19(1), refuse to register the address and issue a certificate in respect of it pursuant to Article 19(2).
- (4) A change of the address of the registered office of a limited liability partnership shall take effect upon the registrar issuing a certificate in respect of it under Article 19(2).

- 
- (5) Where the change of address of the registered office of a limited liability partnership is to take effect before the expiry of the period of 14 days beginning on the day on which the statement in respect of it is delivered to the registrar, a person may validly serve any document on the limited liability partnership or on any of its partners, within that period, at the limited liability partnership's previous registered office.
  - (6) A limited liability partnership shall keep at its registered office the following records –
    - (a) a document containing the name and address of the current secretary and a list showing the name and address of each partner;
    - (b) a copy of the declaration;
    - (c) a copy of the most recent annual return;
    - (d) a copy of any specified solvency statement made within the previous 12 months;
    - (e) a copy of any other statement delivered to the registrar under this Law; and
    - (f) a copy of any certificate issued by the registrar under this Law.
  - (7) In the case where the limited liability partnership has 25 or more members, the list of names referred to in paragraph 6(a) must be placed in alphabetical order.
  - (8) The documents kept under paragraph (6) shall be –
    - (a) *prima facie* evidence of the information which is by that paragraph directed to be contained in them;
    - (b) available for inspection and copying without charge, during the ordinary business hours of the limited liability partnership, at the request of a partner or the secretary.
  - (9) The limited liability partnership shall amend the list kept under paragraph (6)(a) within 28 days after any change in the particulars contained in it.
  - (10) A limited liability partnership shall send to the registrar copies of any of the documents kept under paragraph (6) within 14 days of the registrar requesting any such documents.
  - (11) A limited liability partnership that fails to comply with the requirements of paragraph (6), (7), (8)(b), (9) or (10) shall be guilty of an offence.

## **8 Limited liability partnership secretary**

- (1) Every limited liability partnership, from the date it is registered –
  - (a) must appoint a secretary; and
  - (b) may appoint a deputy secretary, in accordance with paragraph (3), to carry out the secretary's function when, for any reason the secretary is unable to carry out that function.
- (2) The duty to appoint a secretary shall cease only upon cancellation of a limited liability partnership's registration under Article 23 or in any



circumstances described in Regulations made under Article 38(1) concerning the secretary's appointment.

- (3) The secretary or a deputy secretary must be –
  - (a) a company that is –
    - (i) a partner in the limited liability partnership and has a registered office in Jersey, or
    - (ii) registered under Part 2 of the Financial Services (Jersey) Law 1998 to carry on trust company business that permits the provision by that company of the services mentioned in Article 2(4)(e) of that Law; or
  - (b) an individual who is –
    - (i) a partner in the limited liability partnership and ordinarily resident in Jersey, or
    - (ii) registered under Part 2 of the Financial Services (Jersey) Law 1998 to carry on trust company business that permits the provision by that individual of the services mentioned in Article 2(4)(e) of that Law.
- (4) In the event of a secretary's appointment ceasing, or the requirements in paragraph (3)(a) or (b) in relation to the secretary appointed ceasing to be satisfied, the limited liability partnership must appoint a new secretary no later than 28 days after that cessation.
- (5) A limited liability partnership that fails to comply with the requirements in paragraphs (1) or (4) shall be guilty of an offence.

## **9 Records to be held by limited liability partnership secretary**

- (1) Except as provided in Regulations made under Article 38(1), the secretary shall keep for 10 years at a place in Jersey all the accounting records and returns of the limited liability partnership that are provided to the secretary by the limited liability partnership.
- (2) The secretary shall permit any partner of the limited liability partnership to inspect any accounting record or return provided to the secretary (including any specified solvency statement, return provided under Article 11(3) or annual return) of the limited liability partnership at any time during normal business hours.
- (3) If the secretary sends an annual return, a copy of a specified solvency statement or any other document to the registrar or the Commission in accordance with a requirement in this Law, the secretary shall keep a copy of it, and the duty in paragraph (1) applies to any copies of documents retained under this paragraph.
- (4) A secretary who fails to comply with paragraph (1), (2) or (3) shall be guilty of an offence.

## **10 Keeping and form of limited liability partnership records**

- (1) A limited liability partnership must take reasonable precautions –

- 
- (a) to prevent loss or destruction of;
    - (b) to prevent falsification of entries in; and
    - (c) to detect and correct inaccuracies in,

the records it is required to keep by Article 7(6), or provide to its secretary by Article 11(3), 11(4) or 12(3).
  - (2) Each partner of a limited liability partnership shall take reasonable steps to ensure that the limited liability partnership's records are prepared and kept properly and accurately and that, in particular, they contain entries of all sums of money received and expended by the limited liability partnership, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the limited liability partnership, including any interests held by the limited liability partnership in any other legal person or arrangement.
  - (3) A secretary must take reasonable precautions –
    - (a) to prevent loss or destruction of;
    - (b) to prevent falsification of entries in; and
    - (c) to facilitate detection and correction of inaccuracies in,

the records the secretary is required to keep by Article 9(1) and 9(3).
  - (4) A person who ceases being the secretary of a limited liability partnership must –
    - (a) retain all the documents of the limited liability partnership in that person's possession in accordance with Article 9 and take the reasonable precautions described in paragraph (3)(a) and (b) as if the person were still the secretary until such time as the person delivers those documents in accordance with sub-paragraph (b) to the new secretary appointed under Article 8(4); and
    - (b) deliver those documents to the new secretary appointed under Article 8(4) within 14 days of being notified of the name and address of the new secretary.
  - (5) The records referred to in paragraphs (1), (2) and (3) may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.
  - (6) A limited liability partnership that fails to comply with the requirements of paragraph (1) shall be guilty of an offence.
  - (7) A partner that fails to comply with the requirements of paragraph (2) shall be guilty of an offence.
  - (8) A secretary that fails to comply with the requirements of paragraph (3) shall be guilty of an offence.
  - (9) A person who fails to comply with the requirements of paragraph (4) shall be guilty of an offence.

## 11 Accounts and audit

- (1) Subject to the partnership agreement and any Regulations made under Article 38(1)(d) or (e), it shall not be necessary for a limited liability partnership to appoint an auditor nor to have its accounts audited.
- (2) A limited liability partnership shall keep accounting records or returns of the limited liability partnership that are sufficient to show and explain the limited liability partnership's transactions and be such as to disclose with reasonable accuracy at any time the financial position of the limited liability partnership at that time.
- (3) A limited liability partnership whose accounting records are kept in Jersey –
  - (a) may provide its secretary with the accounting records of the limited liability partnership at any time; and
  - (b) shall provide its secretary, within one month of the end of the limited liability partnership's accounting period, with any accounting records of the limited liability partnership in respect of that accounting period that have not already been provided under sub-paragraph (a).
- (4) A limited liability partnership whose accounting records are kept outside Jersey shall provide its secretary, at intervals of not more than 6 months, with a return with respect to the business dealt with in those accounting records in respect of the 6 month period ending no earlier than one month before the date of providing the return.
- (5) A limited liability partnership that fails to provide to its secretary its accounting records or a return, as the case may be, as required under paragraph (2), (3) or (4) shall be guilty of an offence.
- (6) The Chief Minister may by Order prescribe –
  - (a) the accounting records and returns that must be provided under paragraph (3) or (4);
  - (b) the form and content of those records or returns;
  - (c) any other documents and information that must be provided with those records or returns.
- (7) A limited liability partnership's accounting period shall be –
  - (a) not more than 18 months beginning on the day the limited liability partnership was registered; and
  - (b) if the limited liability partnership had previously prepared accounts, not more than 18 months beginning at the end of the period covered by the most recent accounts.

## 12 Specified solvency statement

- (1) A "specified solvency statement" is a statement made by the limited liability partnership in which it states that, in its opinion, having regard to –

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- (a) the prospects of the limited liability partnership and the intentions of the partners who control the management of the limited liability partnership with respect to the management of its business; and
  - (b) the amount and character of the financial resources that will be available to the limited liability partnership,
- the limited liability partnership will be able to –
- (i) continue to carry on business; and
  - (ii) discharge its debts as they fall due,
- until the date which is the earlier of the expiry of the period of 12 months immediately following the date of the specified solvency statement and the dissolution of the limited liability partnership.
- (2) A limited liability partnership –
    - (a) may make a specified solvency statement at any time; and
    - (b) is treated as having made a specified solvency statement if a partner that controls, or a partner that is one of the partners within a group of partners that control, the management of the limited liability partnership signs a statement for or on behalf of the limited liability partnership that contains the opinion described in paragraph (1).
  - (3) If a limited liability partnership makes a specified solvency statement it shall keep the original of it and send a copy of it, within 28 days of making it, to its secretary.
  - (4) A limited liability partnership that permits a partner or former partner to withdraw any limited liability partnership property at any time when the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal shall be guilty of an offence.
  - (5) Paragraph (6) applies where a partner or former partner withdraws any limited liability partnership property at any time when –
    - (a) the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal; or
    - (b) the limited liability partnership has made a specified solvency statement without having reasonable grounds for the opinion given in that statement.
  - (6) Where this paragraph applies the partner or former partner is liable –
    - (a) to return the property to the limited liability partnership; or
    - (b) if the property withdrawn was otherwise than in cash and either –
      - (i) the property is no longer available to be returned, or
      - (ii) the limited liability partnership so requires,to pay to the limited liability partnership a sum equal to the higher of the value of the property as at the date the property was withdrawn and its value as at the date of payment for the property under this Article.

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- (7) Where the partner or former partner is liable under paragraph (6) to pay cash to the limited liability partnership the partner or former partner shall also be liable to pay interest at the prescribed rate on the sum repaid.
  - (8) The liability of a partner or former partner to return limited liability partnership property in accordance with paragraph (6), or interest under paragraph (7), shall be extinguished (but only up to the value of the withdrawal that would have been permitted in the ordinary course of the affairs of the limited liability partnership) where the Court, upon the application of the partner or former partner, declares that it is satisfied that –
    - (a) at the time of the withdrawal the limited liability partnership was solvent;
    - (b) subsequent to the withdrawal the limited liability partnership made a specified solvency statement; and
    - (c) it would not be contrary to the interests of justice for the partner or former partner to be released from that partner's or former partner's liability under paragraph (6).
  - (9) Where limited liability partnership property is withdrawn in the circumstances described in paragraph (5), liability under Article 5(3) shall not arise unless such liability arises in respect of that withdrawal in circumstances other than those described in paragraph (5).
  - (10) Nothing in this Article shall prevent a limited liability partnership from making a statement as to its solvency that is not a specified solvency statement, but such statement may not be treated as a specified solvency statement for the purpose of paragraph (4) or (5).
  - (11) Regulations made under Article 38(1) may make further provision for the return of any limited liability partnership property in circumstances described in paragraph (5).
  - (12) A limited liability partnership that makes a specified solvency statement without having reasonable grounds for having the opinion made in that statement shall be guilty of an offence.
  - (13) A partner that signs a specified solvency statement for or on behalf of a limited liability partnership without having reasonable grounds for having the opinion made in that statement shall be guilty of an offence.
  - (14) For the purposes of this Article a reference to the withdrawal of limited liability partnership property includes the withdrawal of any undistributed share in the limited liability partnership's profits.

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## PART 3

### RELATIONS OF PARTNERS IN A LIMITED LIABILITY PARTNERSHIP WITH ONE ANOTHER AND THIRD PARTIES

#### 13 Relations of partners to one another

- (1) Subject to Parts 2 to 5, the rights and duties of the partners in a limited liability partnership shall, as between themselves, be determined by the partnership agreement.
- (2) Nothing in the partnership agreement may deprive the partners of the benefit of Article 5(1).
- (3) Paragraph (2) shall not be construed as limiting the ability of the partners in a limited liability partnership, as between themselves, to indemnify any of them or any former partner in respect of any debt or loss.

#### 14 Dealings by partners with limited liability partnership

Subject to any terms of the partnership agreement or any provision in this Law or Regulations made under this Law to the contrary, a partner in a limited liability partnership may enter into any transaction with the limited liability partnership, including lending money to, and borrowing money from, it.

#### 15 Admission and retirement of partners

- (1) An additional partner shall not be admitted to a limited liability partnership except in accordance with the partnership agreement.
- (2) Except as described in Regulations made under Article 38(1), a partner may only retire from a limited liability partnership in accordance with the partnership agreement.

#### 16 Assignments, etc.

- (1) A partner in a limited liability partnership may not assign, transfer or otherwise dispose of the whole or part of the partner's partnership interest, except in accordance with the partnership agreement.
- (2) Despite paragraph (1), changes may be made in the partnership interests in a limited liability partnership on the admission or retirement of a partner, on the death of a partner, on a partner who is not an individual ceasing to exist, or in accordance with the partnership agreement.

#### 17 Agency of partner in a limited liability partnership

- (1) Every partner in a limited liability partnership is the agent of that limited liability partnership and accordingly, but subject to paragraph (3), the acts of a partner in the partner's capacity as a partner shall bind the limited liability partnership.

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- (2) A partner in a limited liability partnership is not an agent of the other partners in that limited liability partnership.
  - (3) The acts of a partner in a limited liability partnership shall not bind the limited liability partnership where –
    - (a) the partner is not acting as a partner or is acting without authority; and
    - (b) the person with whom the partner is dealing knows or should reasonably know that paragraph (a) applies.
  - (4) A partner shall not be acting with authority unless the partner is acting –
    - (a) in the ordinary course of the business of the limited liability partnership; or
    - (b) with express authority conferred by or pursuant to the partnership agreement.
  - (5) For the purposes of paragraph (3), no person is deemed to have notice of any records by reason only that they are made available by the registrar for inspection.

## **PART 4**

### **REGISTRATION AND DISSOLUTION OF A LIMITED LIABILITY PARTNERSHIP**

#### **18 Registration of limited liability partnership**

- (1) An application for registration as a limited liability partnership shall be in the form of a declaration, made and signed by a person authorized to sign by every person who is, on registration, to be a partner, and shall be delivered to the registrar by such method or in such form as may reasonably be required by the registrar.
- (2) The declaration shall state –
  - (a) the proposed name of the limited liability partnership, such name to comply with Article 6(1) or 6(2);
  - (b) the intended address of the registered office of the limited liability partnership;
  - (c) the name and address of each person who is to be a partner in the limited liability partnership;
  - (d) the name and address of the proposed secretary and deputy secretary (if any) that it is proposed will be appointed under Article 8;
  - (e) the term, if any, for which the limited liability partnership is to exist or, if for unlimited duration, a statement to that effect;
  - (f) such other information as may be prescribed; and
  - (g) that the person making the declaration is authorized to do so by every person intending to be a partner on the proposed registration date.

- (3) The declaration shall be accompanied by such documents as may be prescribed.
- (4) Subject to Articles 6(4) and 7(3), if the registrar is satisfied that –
  - (a) the application complies with paragraphs (2) and (3); and
  - (b) the proposed registered office is in Jersey, as required by Article 7(1),the registrar shall register the limited liability partnership and issue a certificate of registration.
- (5) The certificate issued under paragraph (4) shall specify on it –
  - (a) the date on which registration of the limited liability partnership takes effect, which shall be the date on which the certificate is issued; and
  - (b) any number or other identifying code allocated by the registrar to the limited liability partnership.

## **19 Amendment of declaration**

- (1) Subject to paragraph (2), following the registration of a limited liability partnership under Article 18, the limited liability partnership shall send to the registrar within 28 days after any change in the information stated in the declaration a statement, signed by the secretary or other person authorized by the limited liability partnership, specifying the change.
- (2) Upon delivery of a statement pursuant to paragraphs (1), if the registrar is satisfied that the change complies with the requirements of this Law, the registrar shall register the change specified in it and issue a certificate recording the change.
- (3) A limited liability partnership that fails to send the statement referred to in paragraph (1) within 28 days from the date of that change occurring shall be guilty of an offence.

## **20 Annual return**

- (1) Subject to paragraph (2), before the end of February in every year following the year in which a limited liability partnership is registered, the secretary shall deliver an annual return to the registrar stating –
  - (a) whether the secretary has received from the limited liability partnership any specified solvency statement, made on or after the 1st March of the previous year; and
  - (b) whether the limited liability partnership has provided to the secretary accounting records or any return under Article 11 and, if so, whether the limited liability partnership has indicated that it has provided all the records that it is required to provide under Article 11.
- (2) Paragraph (1) shall not apply in the case where a limited liability partnership is the subject of a declaration made under Article 6 of the Bankruptcy (Désastre) (Jersey) Law 1990.



- (3) The secretary shall deliver to the registrar with the annual return a copy of any specified solvency statement the secretary has received from the limited liability partnership in accordance with Article 12(3) on or after the 1st March of the previous year.
- (4) A secretary that fails to comply with paragraph (1) or (3) shall be guilty of an offence.

## **21 Validity and proof of registration**

- (1) No error in the declaration delivered to the registrar pursuant to Article 18, the annual return delivered pursuant to Article 20 or any statement delivered to the registrar pursuant to this Law, nor any default in the delivery of an annual return, any such statement or any copy required to be delivered to the registrar under this Law shall affect the validity of the registration of a limited liability partnership.
- (2) A certificate issued under Article 18(4) is conclusive evidence as to the registration of a limited liability partnership.

## **22 Dissolution of limited liability partnership**

- (1) If the registrar has reason to believe that a limited liability partnership is not carrying on business –
  - (a) the registrar may serve a notice on the limited liability partnership requiring it to advise the registrar whether or not it is carrying on business; and
  - (b) if the registrar receives an answer to the effect that the limited liability partnership is not carrying on business, or if the registrar does not, within one month after serving the notice, receive an answer, the registrar may publish and serve on the limited liability partnership a notice of intended dissolution under paragraph (3).
- (2) Where –
  - (a) the limited liability partnership has failed to appoint a secretary in compliance with Article 8;
  - (b) the limited liability partnership has failed to provide its secretary with any accounting record or return required to be provided to its secretary under this Law;
  - (c) the limited liability partnership's secretary has failed to send to the registrar any annual return or any specified solvency statement in compliance with Article 20;
  - (d) the limited liability partnership has failed to pay any fee required to be paid under Article 28; or
  - (e) the limited liability partnership does not have a registered office in Jersey, as required under Article 7(1),the registrar may serve on the limited liability partnership a notice of intended dissolution under paragraph (3).
- (3) A notice of intended dissolution shall state that at the end of the period of 3 months following the date of the notice, the registrar will issue a

certificate of dissolution in respect of the limited liability partnership unless –

- (a) where the notice relates to a failure, referred to in paragraph (2)(a), (d) or (e) on the part of the limited liability partnership, the limited liability partnership has complied with that requirement;
  - (b) where the notice relates to a failure referred to in paragraph (2)(b) or (c) on the part of the limited liability partnership or its secretary, as the case may be, the limited liability partnership or its secretary has complied with that requirement to the satisfaction of the registrar in respect of every period in which that requirement was not previously met; or
  - (c) in any other case, the registrar is satisfied that there is sufficient reason shown by the limited liability partnership, a partner, secretary or creditor of the limited liability partnership, or any other interested party, why the limited liability partnership should not be dissolved.
- (4) If the conditions in paragraph (3)(a), (b) or (c) (as the case may be) have not been satisfied before the end of the period mentioned in the notice of intended dissolution, the registrar may issue a certificate of dissolution of the limited liability partnership and if such certificate is issued, must –
- (a) serve the certificate on the limited liability partnership and secretary (if any);
  - (b) register the certificate; and
  - (c) publish a notice stating that such a certificate has been issued.
- (5) A certificate issued under paragraph (4) is conclusive evidence as to the dissolution of the limited liability partnership.
- (6) Despite paragraph (5), where a certificate has been issued under paragraph (4) or Regulations made under paragraph (9) –
- (a) on an application made by –
    - (i) a person who was a partner immediately before the certificate was issued; or
    - (ii) any other person appearing to the Court to be interested; and
  - (b) in circumstances described in Regulations made under Article 38(1),

the Court may at any time before a certificate of cancellation is issued under Article 23 or, where such a certificate has been issued, within 10 years from the date of issue of that certificate, make an order, on such terms as the Court thinks fit, declaring the certificate of dissolution void.

- (7) In making an order under paragraph (6) the Court may give such directions and make such provisions as seem just, including (but not limited to) directions and provisions –
- (a) with the aim of placing the limited liability partnership and all other interested persons in the same position as nearly as may be as if the limited liability partnership had not been dissolved; and

- (b) requiring the registrar to publish a notice of the Court's decision and the effect of that decision on the certificate issued under paragraph (4) or under Regulations made under paragraph (9).
- (8) The person on whose application the order under paragraph (6) was made shall within 14 days after the making of the order (or such further time as the Court may allow), deliver the relevant Act of the Court to the registrar for registration.
- (9) The States may by Regulations enable or require the registrar to issue a certificate of dissolution and publish a notice in respect of a limited liability partnership where it is dissolved in any circumstances specified in the Regulations.

### **23 Cancellation of registration**

- (1) The registrar shall cancel the entry in the register relating to the limited liability partnership and issue a certificate of cancellation of registration where –
  - (a) the registrar has been notified of the completion of the winding up of the affairs of the limited liability partnership pursuant to Regulations made under Article 38(1); or
  - (b) the registrar has been notified under Article 38(3) of the Bankruptcy (Désastre) (Jersey) Law 1990.
- (2) The States may by Regulations provide for the cancellation of registration of a limited liability partnership in any other circumstances.
- (3) On cancelling a limited liability partnership's registration under paragraph (1) or pursuant to Regulations made under Article 38(1) or paragraph (2) the registrar shall publish a notice of that fact.
- (4) A certificate of cancellation of a limited liability partnership's registration issued by the registrar under paragraph (1) or pursuant to Regulations made under Article 38(1) or paragraph (2) is conclusive evidence as to the cancellation of the registration of the limited liability partnership.
- (5) Despite paragraph (4), where the registration of a limited liability partnership has been cancelled under this Article or pursuant to Regulations made under Article 38(1) or paragraph (2) –
  - (a) on an application made by –
    - (i) a person who was a partner immediately before the cancellation, or
    - (ii) any other person appearing to the Court to be interested; and
  - (b) in circumstances described in Regulations made under Article 38(1),

the Court may at any time within 10 years of the date of the cancellation make an order, on such terms as the Court thinks fit, declaring the cancellation of registration void.
- (6) In making an order under paragraph (5), the Court may give such directions and make such provisions as seem just, including directions and provisions –

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- (a) with the aim of placing the limited liability partnership and all other interested persons in the same position as nearly as may be as if –
    - (i) the registration of the limited liability partnership had not been cancelled, or
    - (ii) the limited liability partnership had not been dissolved; and
  - (b) requiring the registrar to publish a notice of the Court’s decision and the effect of that decision on the cancellation of registration.
- (7) The person on whose application the order under paragraph (5) was made shall within 14 days after the making of the order (or such further time as the Court may allow), deliver the relevant Act of the Court to the registrar for registration.
  - (8) A person who fails to comply with paragraph (7) is guilty of an offence.

## **PART 5**

### MISCELLANEOUS AND GENERAL

#### **24 Legal proceedings**

- (1) Except as provided in Regulations made under Article 38(1), legal proceedings by or against a limited liability partnership shall be instituted by or against the limited liability partnership and any judgment shall be made in such proceedings in favour of or against the limited liability partnership.
- (2) Subject to paragraph (3) and except as provided in Regulations made under Article 38(1), no judgment shall be enforced against any limited liability partnership property unless such judgment has been made against the limited liability partnership.
- (3) Paragraph (2) shall not affect any right of a judgment creditor of a partner in a limited liability partnership to enforcement against that partner’s partnership interest and any sum due to the partner from the limited liability partnership by way of repayment of a loan.
- (4) Where a judgment creditor of a partner in a limited liability partnership has a right of enforcement against any of that partner’s assets described in paragraph (3), the other partner or partners in the limited liability partnership may prevent or stop enforcement against those assets by paying to the creditor whichever is the lesser of the amount for which enforcement is sought and an amount equal to the value of the first mentioned partner’s partnership interest plus any sum due to that partner from the limited liability partnership by way of repayment of a loan.
- (5) A judgment creditor or a partner in the limited liability partnership may apply to the Court for a determination of the value of any limited liability partnership property for the purpose of ascertaining the amount to be paid to the judgement creditor under paragraph (4).

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- (6) Execution to enforce a judgment obtained against a limited liability partnership pursuant to paragraph (1) or against the person responsible for winding up the affairs of the limited liability partnership pursuant to Regulations made under Article 38(1) shall only be capable of being issued against and satisfied out of the limited liability partnership property as at the date of such execution (no account being taken of any changes in the partners composing the limited liability partnership prior to such date).
  - (7) Any person shall have the right to join or otherwise institute proceedings against –
    - (a) any partner or any former partner of a limited liability partnership who is liable by virtue of Article 5(3) or 12(6); and
    - (b) any person holding limited liability partnership property on behalf of a limited liability partnership, for the purposes of enforcement against that property.

## **25 Service of documents and other communication**

- (1) Subject to paragraph (2) –
  - (a) service of a document on a limited liability partnership may be effected by sending it by post or delivering it to the registered office of the limited liability partnership; and
  - (b) service of a document on a partner in the partner's capacity as such may be effected by sending it by post or delivering it either to the partner at the registered office of the limited liability partnership or at the address for service stated for the partner in the declaration.
- (2) The Chief Minister may by Order –
  - (a) make provision for the registrar to be given information by the limited liability partnership or its partners for the purpose of effecting service of documents relevant to the registrar's functions under this Law;
  - (b) make provision for service of documents and other communications to be effected, or be deemed to have been effected, by means in addition to, or instead of, the methods described in paragraph (1).

## **26 Order for compliance**

- (1) Where a person who is required by this Law to sign, deliver or permit inspection or copying of any document fails to do so, a person who is aggrieved by the failure may apply to the Court for an order directing that person to comply with the Law and upon such application the Court may make such order as it considers appropriate in the circumstances.
- (2) An application may be made under paragraph (1) notwithstanding the imposition of a penalty in respect of the failure and in addition to any other rights the applicant may have at law.

**27 Appointment and functions of registrar**

- (1) The registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991 shall be the registrar of limited liability partnerships.
- (2) The registrar shall maintain a register of limited liability partnerships and record in it any declaration, return or statement, or copy of any such declaration, return or statement, delivered to the registrar and the issue of any certificate by the registrar pursuant to this Law.
- (3) Any certificate issued by the registrar under this Law shall be signed by the registrar and sealed with the registrar's seal (if any).
- (4) The Commission may direct a seal to be prepared for the authentication of documents required for or in connection with the registration of limited liability partnerships.
- (5) Any functions of the registrar under this Law may, to the extent authorized by the registrar, be exercised by an officer on the staff of the Commission.
- (6) The registrar, on application or if the registrar is satisfied that it is necessary to do so, may remove from the register material that –
  - (a) derives from anything invalid or ineffective or that was done without the authority of the limited liability partnership; or
  - (b) is inaccurate, or is derived from something that is inaccurate or forged.
- (7) Before exercising the power in paragraph (6), the registrar must publish its policy as to –
  - (a) who may make an application;
  - (b) the information to be included in and documents to accompany an application;
  - (c) the notice to be given of an application and of its outcome;
  - (d) a period in which objections to an application may be made;
  - (e) how an application is to be determined;
  - (f) the appeal process that will apply in a case where a person is aggrieved by the registrar's decision to remove the material.

**28 Fees, charges and forms**

- (1) The Commission may require the payment to it by a limited liability partnership of an annual administration fee.
- (2) The States may by Regulations provide that, in addition to the annual administration fee, a limited liability partnership shall pay to the Commission annually such amount as the States determine in the Regulations.
- (3) The annual administration fee and the annual additional amount under paragraph (2) (if any) are payable by a limited liability partnership to the Commission before the end of February in each year following the year in which the limited liability partnership is registered.

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- (4) An annual administration fee and an annual additional amount (if any) are debts due by a limited liability partnership to the Commission, and are recoverable accordingly in a court of competent jurisdiction.
  - (5) The Commission shall pay to the Treasurer of the States any additional amounts that are paid to the Commission under Regulations made under paragraph (2).
  - (6) The Commission may require –
    - (a) the payment to it of fees in respect of the performance by the registrar of his or her functions under this Law;
    - (b) the payment of a fee for the provision by the registrar of –
      - (i) any service or assistance, or
      - (ii) any documents, or information; and
    - (c) the payment of a late delivery fee if a copy of a document is not delivered to the registrar as required by this Law, which shall be payable when the document is delivered.
  - (7) Where a fee mentioned in paragraph (6) is payable in respect of the performance of a function by the registrar, the registrar need take no action until the fee is paid.
  - (8) Where the fee is payable on the receipt by the registrar of a document required to be delivered to the registrar the registrar shall be taken not to have received the document until the fee is paid.
  - (9) The Commission may publish forms and other documents to be used for any of the purposes of this Law together with details of the manner in which any such document to be delivered to the registrar is to be authenticated.
  - (10) Where this Law requires a document to be delivered to the registrar, but the form of the document has not been published by the Commission it shall be sufficient compliance with the requirement if a document or the information it must contain is delivered in a form and manner acceptable to the registrar.
  - (11) For the purposes of this Article a fee shall be payable if it has been published and is in effect in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998.

## **29 Inspection and production of documents kept by registrar**

- (1) A person may –
  - (a) inspect a document delivered to the registrar under this Law and kept by the registrar or, if the registrar thinks fit, a copy thereof; or
  - (b) require a certificate of the registration of a declaration or copy, certified or otherwise, of any other document or part of any other document referred to in sub-paragraph (a),and a certificate given under sub-paragraph (b) shall be signed by the registrar and sealed with the registrar's seal (if any).

- (2) A copy of or extract from a record kept by the registrar, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to the registrar under this Law, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.
- (3) The registrar may publish details of the times during which, and the manner by which, a document may be inspected or issued under paragraph (1).

### **30 Production and inspection of records where offence suspected**

- (1) If, on an application by the Attorney General, there is shown to be reasonable cause to believe that a person has, while a partner or secretary of the limited liability partnership, committed an offence in connection with the management of the limited liability partnership's affairs and that evidence of the commission of the offence is to be found in any records of or under the control of the limited liability partnership or a partner or secretary, the Court may make an order –
  - (a) authorizing a person named in it to inspect the records in question for the purpose of investigating and obtaining evidence of the offence; or
  - (b) requiring the secretary or a partner of the limited liability partnership named in the order to produce and make available the records to a person named in the order at a place so named.
- (2) The decision of the Court on an application under this Article is not appealable.

### **31 Destruction of old records, etc.**

- (1) Where a limited liability partnership has been dissolved, the registrar may, at any time after 10 years from the date of the cancellation, destroy any records relating to that limited liability partnership in the registrar's possession or under the registrar's control.
- (2) After 10 years from the cancellation of a limited liability partnership, no responsibility rests on any person to whom custody of the records has been committed by reason of any record not being forthcoming to a person claiming to be interested in it.

### **32 Legal professional privilege**

Where criminal proceedings are instituted by the Attorney General under this Law against any person, nothing in this Law is to be taken to require any person to disclose any information which the person is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the Court.



**33 Registration in the Public Registry**

The Judicial Greffier shall register in the Public Registry all Acts and orders affecting immovable property made under this Law.

**34 Offences of giving false or misleading etc. information**

- (1) A person who makes a statement in any document, material, evidence or information which is required to be delivered to the registrar under this Law that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact the omission of which makes the statement false or misleading, shall be guilty of an offence.
- (2) A person shall not be guilty of an offence under paragraph (1) if the person did not know that the statement was false or misleading and with the exercise of reasonable diligence could not have known that the statement was false or misleading.
- (3) A person who carries on a business under a name or title which includes the words “limited liability partnership” or any contraction of those words when the person is not registered as a limited liability partnership under this Law or otherwise established as a limited liability partnership in another jurisdiction, shall be guilty of an offence.
- (4) A person who wilfully takes or uses any name, title, addition or description implying that the person is a partner in a limited liability partnership when the person is not, or implying that a person is a partner in a partnership which is not a limited liability partnership when the partnership is a limited liability partnership, shall be guilty of an offence.

**35 Criminal liability of partners, directors and other officers**

- (1) This Article applies where an offence under this Law by a body corporate, a limited liability partnership or any other partnership with separate legal personality is proved –
  - (a) to have been committed with the consent or connivance of a person mentioned in paragraph (2); or
  - (b) to be attributable to any neglect on the part of a person mentioned in paragraph (2).
- (2) The persons to whom paragraph (1) refers are –
  - (a) in the case of an incorporated limited partnership, a general partner or a limited partner who is participating in the management of the partnership;
  - (b) in the case of any other body corporate, a director, manager or other similar officer of the body corporate;
  - (c) in the case of a limited liability partnership, a partner;
  - (d) in the case of a separate limited partnership or any partnership with a separate legal personality except a limited liability partnership, a general partner or a limited partner who is participating in the management of the partnership; or

- (e) in any case, any other person purporting to act in a capacity described in any of sub-paragraphs (a), (b), (c) and (d).
- (3) Where this Article applies, the person shall also be guilty of the offence and liable to the penalty provided for that offence in the same manner as the incorporated limited partnership, other body corporate, limited liability partnership, separate limited partnership or other partnership with separate legal personality.
- (4) Where the affairs of a body corporate are managed by its members, paragraphs (1) and (3) shall apply in relation to acts and defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate.

### **36 Penalties**

- (1) The penalty for an offence committed under Article 6(13), 7(11), 8(5), 9(4), 10(6), 10(7), 10(8), 10(9), 11(5), 12(4), 19(3), 20(4), or 23(8) shall be a fine not exceeding level 4 on the standard scale.
- (2) The penalty for an offence under Article 12(12), 12(13), 34(1), 34(3) or 34(4) shall be a fine and 2 years imprisonment.

### **37 Limitation of liability**

- (1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or any enactment made, or purportedly made, under this Law unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to –
  - (a) the States;
  - (b) the Chief Minister or any person who is, or is acting as, an officer, servant or agent in an administration of, the States for which the Chief Minister is assigned responsibility;
  - (c) the Commission, any Commissioner or any person who is, or is acting as, an officer, servant or agent of the Commission; and
  - (d) the registrar, the deputy registrar, an assistant registrar or any person who is, or is acting as, an officer, servant or agent of the registrar.

### **38 Regulations**

- (1) The States by Regulations may provide for –
  - (a) the dissolution and winding up of solvent or insolvent limited liability partnerships, including the settling of accounts on winding up;
  - (b) the recognition of proceedings in other jurisdictions;
  - (c) the qualifications of an insolvency manager;

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- (d) the preparation of accounts of limited liability partnerships, including –
    - (i) the form and content of financial statements,
    - (ii) the period they need to cover, and
    - (iii) the time limits by which they should be prepared or submitted;
  - (e) the audit of limited liability partnerships,
- and may make any provision for the purpose of carrying this Law or any Regulations made under this Law into effect.
- (2) Regulations made under paragraph (1)(e) may –
    - (a) stipulate and require qualifications for auditors, require and provide for their registration, appointment, functions, powers, duties, status and immunities; and
    - (b) provide for the ineligibility and disqualification of persons for appointment as auditors, the disciplinary control of auditors (including the suspension and revocation of registration), and the suspension and removal of persons appointed as auditors of particular limited liability partnerships.
  - (3) Paragraph (2) does not limit the generality of paragraph (1)(e).
  - (4) The States may by Regulations amend Articles 1, 7 to 12, 18 to 20, 22, 23, 25, 27 to 29 and 31.
  - (5) Regulations made under this Law may –
    - (a) provide for the Chief Minister or Commission to exercise a discretion in respect of matters provided for in the Regulations;
    - (b) make different provision for different cases and contain such incidental, supplemental, transitional and savings provisions as appear to the States to be necessary or expedient; and
    - (c) create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine.

### **39 Orders**

- (1) The Chief Minister may by Order prescribing any matter which is to be prescribed under this Law.
- (2) An Order made under this Law may make different provision for different cases and contain such incidental, supplemental and transitional provisions as appear to the Chief Minister to be necessary or expedient.
- (3) The Chief Minister shall consult the Commission before making any Orders under this Law.

### **40 Rules of Court**

The power to make Rules of Court under the Royal Court (Jersey) Law 1948 shall include a power to make Rules for the purposes of this Law.

**41 Professional rules not affected by Law**

Nothing in this Law affects any duty arising in respect of partners that are subject to the rules or laws of Jersey in respect of their profession as a solicitor, advocate, accountant or other profession.

**42 Customary Law**

The rules of customary law applicable to a partnership shall apply to a limited liability partnership except in so far as they are inconsistent with the express provisions of this Law.

**43 Amendments to other enactments and repeals**

- (1) The enactments specified in the Schedule are amended or repealed in the manner specified in the Schedule.
- (2) The States may by Regulations make transitional and savings provisions and may make amendments to any enactment, including any provision of the Schedule that is not in force, as appear to the States to be expedient –
  - (a) for the general purposes, or any particular purpose, of this Law;
  - (b) in consequence of any provision made by or under this Law; or
  - (c) for giving full effect to this Law or any provision of it.
- (3) The States may, by Regulations amend this or any other Law for any transitional matter connected with the repeal of the Limited Liability Partnerships (Jersey) Law 1997 or the coming into force of this Law.

**44 Citation and commencement**

This Law may be cited as the Limited Liability Partnerships (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

**SCHEDULE**

(Article 39)

**AMENDMENTS TO OTHER ENACTMENTS AND REPEALS****1 Limited Liability Partnerships (Jersey) Law 1997 repealed**

The Limited Liability Partnerships (Jersey) Law 1997 shall be repealed.

**2 Control of Borrowing (Jersey) Law 1947 amended**

In the Control of Borrowing (Jersey) Law 1947 –

- (a) In Article 1(1), in the definition of “limited liability partnership”, for the words “has the meaning given to it by the Limited Liability Partnerships (Jersey) Law 1997” there shall be substituted the words “means a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997 or the Limited Liability Partnerships (Jersey) Law 201-”;
- (b) In Article 1(6) and 2(10) after the word “1997” there shall be inserted the words “or the Limited Liability Partnerships (Jersey) Law 201-”.

**3 Control of Borrowing (Jersey) Order 1958 amended**

In the Control of Borrowing (Jersey) Order 1958 –

- (a) in Article 11(1)(c) after the words “1997 Law” there shall be inserted the words “or the 201- Law”; and
- (b) in Article 11(3) after the words “Law 1997” there shall be inserted the words “and ‘201- Law’ means the Limited Liability Partnerships (Jersey) Law 201-”.

**4 Collective Investment Funds (Jersey) Law 1988 amended**

In the Collective Investment Funds (Jersey) Law 1988 –

- (a) in Article 5(2) after the word “1997” there shall be inserted the words “, or the Limited Liability Partnerships (Jersey) Law 201-”;
- (b) in Article 8 –
  - (i) for sub-paragraph (1)(c) there shall be substituted the following sub-paragraph –
    - “(c) the general partner of an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011, a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994 or a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011.”.

- (ii) after paragraph (1) there shall be inserted the following paragraph –
  - “(1A) A limited liability partnership shall not carry on the business of a collective investment fund.”, and
- (iii) in paragraph (2), after the words “paragraph (1) there shall be inserted the words “or (2)”;
- (c) for Article 8A(1)(c) there shall be substituted the following sub-paragraph –
  - “(c) the general partner of an incorporated limited partnership, a limited partnership or a separate limited partnership that is an unclassified fund.”;
- (d) for Article 8B(10)(b)(iii) there shall be substituted the following paragraph –
  - “(iii) where the fund is an incorporated limited partnership, a limited partnership or a separate limited partnership the general partner of the partnership.”.

## **5 Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 amended**

In the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 –

- (a) In Article 1(1) –
  - (i) in paragraph (c) of the definition “documents constituting the fund” the words “a limited liability partnership,” shall be deleted,
  - (ii) in the definition “general partner” paragraph (b) shall be deleted;
- (b) In Schedule 1 –
  - (i) in paragraphs 2(e)(i), 5(b), 14(1)(c)(vii), 16(a)(iv), 17(h)(vi) and 20(6) the words “a limited liability partnership,” wherever they appear, shall be deleted,
  - (ii) paragraph 13(i) shall be deleted.

## **6 Companies (Jersey) Law 1991 amended**

In the Companies (Jersey) Law 1991 –

- (a) In Article 1(2)(d), and in the definition of “partnership” in Article 102(1), after the word “1997” each time it appears there shall be inserted the words “or the Limited Liability Partnerships (Jersey) Law 201-”; and
- (b) for Article 127GA(2)(a) there shall be substituted the following sub-paragraphs –
  - “(a) to mergers of companies with bodies that are incorporated in Jersey but are not companies;
  - (ab) to mergers of companies with limited liability partnerships that are registered in Jersey under the Limited Liability Partnerships (Jersey) Law 201-; and”.

**7 Financial Services (Jersey) Law 1998 amended**

In the Financial Services (Jersey) Law 1998 –

- (a) in Article 1(1) in the definition “secretary”, after the words “howsoever named” there shall be inserted the words “, or a person appointed as the secretary to a limited liability partnership under the Limited Liability Partnerships (Jersey) Law 201-”;
- (b) in Article 2(3) –
  - (i) in sub-paragraph (b) the word “or” shall be deleted,
  - (ii) for sub-paragraph (c) shall be substituted following sub-paragraphs –
    - “(c) the provision of services to foundations; or
    - (d) the provision of services to partnerships,”;
- (c) in paragraph 2(4)(e), after the word “company” there shall be inserted the words “or a limited liability partnership established under the Limited Liability Partnerships (Jersey) Law 201-”;
- (d) in Article 41(4), after the word “partner” there shall be inserted the words “or secretary”.

**8 Income Tax (Jersey) Law 1961 amended**

In the Income Tax (Jersey) Law 1961 –

- (a) in Article 3(1), in the definition of “partnership” after the word “1997” there shall be inserted the words “or the Limited Liability Partnerships (Jersey) Law 201-”;
- (b) in Article 3AD(1)(b) after the word “1997” there shall be inserted the words “, or the Limited Liability Partnerships (Jersey) Law 201-”;
- (c) in Article 76D(7), after the words “a limited liability partnership” there shall be added the words “established under the Limited Liability Partnerships (Jersey) Law 1997”;
- (d) in Article 76D(8), after the word “1997” there shall be inserted the words “, in relation to a limited liability partnership established under that Law, and ‘declaration’, ‘limited liability partnership’ and ‘partner’ have the same meaning as they have in the Limited Liability Partnerships (Jersey) Law 201- in relation to a limited liability partnership established under the Limited Liability Partnerships (Jersey) Law 201-”.

**9 Other enactments amended**

- (1) In the following provisions, after the word “1997” each time it appears there shall be inserted the words “or the Limited Liability Partnerships (Jersey) Law 201-” –
  - (a) Article 1(1) of the Registration of Business Names (Jersey) Law 1956, in the definition of “limited liability partnership”;
  - (b) Articles 4(a)(xi) and 13(2) of the Security Interests (Jersey) Law 1983;

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- (c) Article 3(3)(b) of the Banking Business (Jersey) Law 1991;
  - (d) Article 5(6) of the Insurance Business (Jersey) Law 1996;
  - (e) Article 6(b) of the Financial Services Commission (Jersey) Law 1998;
  - (f) Article 1(1), in paragraph (c) of the definition of “Island person”, and Article 8(2)(b)(iii) of the Crime and Security (Jersey) Law 2003;
  - (g) Article 8(1)(c) of the Crime (Transnational Organized Crime) (Jersey) Law 2008;
  - (h) Article 1(1) of the Money Laundering (Jersey) Order 2008, in the definition of “Jersey Limited Liability Partnership”;
  - (i) Regulation 2 of the Alternative Investment Funds (Jersey) Regulations 2012, in the definition of “limited liability partnership”.
- (2) In the following provisions, for the words “has the meaning given to it in the Limited Liability Partnerships (Jersey) Law 1997” there shall be substituted the words “means a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997 or the Limited Liability Partnerships (Jersey) Law 201-” –
- (a) Article 1(1) of the Bankruptcy (Désastre) (Jersey) Law 1990, in the definition of “limited liability partnership”;
  - (b) Article 1(1) of the Corruption (Jersey) Law 2006, in the definition of “limited liability partnership”;
- (3) In Article 3(2)(c) of the Alternative Investment Funds Regulations 2012, for the words “Article 16 of the Limited Liability Partnerships (Jersey) Law 1997” there shall be substituted the words “the Limited Liability Partnerships (Jersey) Law 1997 or the Limited Liability Partnerships (Jersey) Law 201-”.
- (4) In Article 23(4)(j) of the Money Laundering (Jersey) Order 2008, after the word “1998” there shall be added the words “, or appointed under Regulations made under Article 38(1) of the Limited Liability Partnerships (Jersey) Law 201-”.





Jersey

# **DRAFT LIMITED LIABILITY PARTNERSHIPS (DISSOLUTION AND WINDING UP, ETC.) (JERSEY) REGULATIONS 201-**

## **REPORT**

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**CONSULTATION DRAFT ONLY – NOT READY  
FOR LODGING**

## **Explanatory Note**

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These Regulations make provision for the dissolution and winding up of limited liability partnerships and supplement the provisions of the Limited Liability Partnership (Jersey) Law 201- (the Law”).

*Part 1* comprises *Regulation 1*, which sets out the definitions of the terms used in these Regulations.

*Part 2*, which applies to any limited liability partnership, sets out the circumstances when a limited liability partnership may be dissolved. In particular, by *Regulation 3*, a limited liability partnership is not dissolved by any change in the persons who are partners, if the partnership agreement so provides, and, by *Regulation 4*, it is dissolved immediately upon there ceasing to be 2 or more partners.

When a limited liability partnership dissolves, other than by order of the Royal Court (“Court”), *Regulation 5* requires the secretary of the limited liability partnership or, if none, any partner remaining at the time the limited liability partnership dissolves, within 28 days of dissolution to provide a statement of dissolution to the registrar. Upon receipt of the statement, the registrar must issue a certificate of dissolution and publish a notice of dissolution. By Article 1(4) of the Limited Liability Partnerships (Jersey) Law 201-, the requirement to “publish” a form, document or notice is a requirement to publish it in a manner that is likely to bring it to the attention of any person affected by it).

*Regulation 6* sets out the circumstances when a partner may apply to the Court for an order of dissolution of a limited liability partnership. When the Court makes such an order the partner who made the application must deliver a copy of the Court order to the registrar within 28 days of it being made and, upon receipt of the order, the registrar must register the order, issue a certificate of dissolution and publish a notice stating that a certificate of dissolution has been issued.

*Regulation 7* makes provision enabling 2 or more partners in a dissolved limited liability partnership to acquire the partnership interests of the other persons who were partners at the date of dissolution, either by agreement of those partners or by order of the Court. Where such an acquisition takes place winding up of the limited liability partnership will not be completed, the limited liability partnership will continue as if it had not been dissolved and the partners whose interests were acquired will be taken to have retired from the partnership. One of the acquiring partners must within 28 days after the acquisition send to the registrar a statement of cancellation of the dissolution and, upon receipt of the statement, the registrar must issue a certificate of cancellation of dissolution and publish a notice stating that such a certificate has been issued.

*Part 3* makes provision for the winding up of solvent limited liability partnerships, as stated in *Regulation 8*.

*Regulation 9* provides that the dissolution manager is responsible for the winding up of a solvent limited liability partnership, and sets out who will be a dissolution manager. It makes clear that should the limited liability partnership become insolvent following dissolution, the dissolution manager will need to cease its winding up under Part 3, and follow the procedures in Part 4.

*Regulation 9(6)* confirms that upon a Limited Liability Partnership only having one partner remaining, whether before or after the partnership has dissolved, despite the limited liability partnership's registration remaining in force, the limited liability partnership will cease to be a legal person and the duty to appoint a secretary will cease to apply. It also provides that, in the event of there being only one partner remaining, the limited liability partnership property vests in the dissolution manager, proceedings against the limited liability partnership will be against the dissolution manager in that capacity, and judgments will be against the dissolution manager in that capacity.

*Regulation 10* enables the Court to give directions in the course of the winding up of the affairs of a solvent limited liability partnership upon the application of any partner or creditor of the limited liability partnership, the dissolution manager or other persons listed in that Regulation.

*Regulation 11* provides for the settling of accounts of a solvent limited liability partnership on winding up, including the manner in which the liabilities of a solvent limited liability partnership must be settled.

*Regulation 12* requires the dissolution manager to send to the registrar, within 28 days after completion of the winding up, a statement to the effect that the winding up has been completed.

*Part 4* makes provision for the winding up of insolvent limited liability partnerships, whether they are insolvent at the date of dissolution or become insolvent following dissolution.

*Regulation 13* defines "insolvency manager", in relation to an insolvent limited liability partnership, as the person for the time being appointed under *Regulation 17*,

19 or 20 to be responsible for its insolvent winding up, and “insolvency committee” as the committee appointed under *Regulation 18*.

*Regulation 14* provides that the dissolution manager is responsible for the winding up of an insolvent dissolved limited liability partnership until such time as an insolvency manager is appointed and sets out who will be a dissolution manager. It also confirms that upon dissolution of an insolvent limited liability partnership, in certain circumstances, the limited liability partnership ceases to be a legal person and the duty to appoint a secretary ceases to apply. It also provides that in that event the limited liability partnership property vests in the dissolution manager, proceedings against the limited liability partnership will be against the dissolution manager in that capacity, and judgments will be against the dissolution manager in that capacity.

*Regulation 15* sets out procedures for the dissolution manager for the purposes of informing the registrar of the insolvency and calling a meeting of the creditors of the limited liability partnership.

*Regulation 16* sets out the quorum and procedures at creditors’ meetings.

*Regulations 17 to 20* provide for the appointment and remuneration of an insolvency manager or an insolvency committee, the removal of an insolvency manager and the limited powers of the dissolution manager during the period before appointment of the insolvency manager.

*Regulation 21* permits applications to be made to the Court for the Court to determine any question arising in an insolvent winding up.

*Regulation 22* provides for the rules in force for the time being with respect to persons against whom a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990 to apply in respect of the winding up of limited liability partnerships, modified so as to refer to the insolvency manager and to insolvent winding up.

*Regulation 23* provides for arrangements entered into between creditors and the limited liability partnership prior to the commencement of an insolvent winding up to be binding in the circumstances described in that Regulation.

*Regulation 24* makes provisions for the settling of accounts on winding up of an insolvent limited liability partnership, including the priority of payments to be made to creditors.

By *Regulation 25*, if an insolvent winding up continues for more than 12 months, the insolvency manager is required to call a further meeting or meetings of the partners and creditors of the limited liability partnership, at the intervals described in that Regulation.

*Regulation 26* requires the insolvency manager to call a final meeting for the partners and creditors to explain the final report, and *Regulation 27* requires the insolvency manager to deliver a statement to the registrar with the result of that meeting and a copy of the insolvency manager’s report.

*Regulation 28* describes the effect of a declaration made under the Bankruptcy (Désastre) (Jersey) Law 1990 that a partnership is *en désastre*.

*Regulation 29* describes the registrar’s duty to register the statement received under *Regulation 27*, or the notification received under Regulation 36(3) of the Bankruptcy (Désastre) (Jersey) Law 1990, and to cancel the registration of the limited liability

partnership at the end of 3 months from the registration of such statement or notification.

*Regulation 30* describes the circumstance when an insolvency manager can pay a class of creditors in full or compromise a claim by or against the limited liability partnership and *Regulation 31* describes the process to be followed by an insolvency manager wishing to disclaim onerous movable property (defined as an unprofitable contract or other movable property that is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act).

*Regulation 32* gives the Court power to make an order to vest disclaimed property in, or deliver it to, another person.

*Regulation 33* makes clear that in an insolvent winding up a lien or other right to retain possession of any records of a limited liability partnership shall not prevent the insolvency manager taking possession of them.

*Regulation 34* enables the insolvency manager to apply to the Court where a transaction has been entered into by the limited liability partnership at an undervalue, or where the limited liability partnership has given a preference to any person, for an order to restore the position to what it would have been had that event not occurred.

*Regulation 35* enables the insolvency manager to apply to the Court for an order that a partner or former partner be personally liable for all or any debts or other liabilities of the limited liability partnership arising at any time before the commencement of the insolvent winding up where the person knew that there was no prospect that the limited liability partnership would avoid insolvency or the person was reckless as to whether it would avoid insolvency.

*Regulation 36* enables the insolvency manager to apply to the Court for an order requiring any person who was carrying out any business of the limited liability partnership with a view to defrauding creditors of the limited liability partnership to be liable to make such contributions to the limited liability partnership property as the Court thinks proper.

*Regulation 37* enables the insolvency manager to apply to the Court for an order in respect of any provision of credit to the limited liability partnership where the transaction is or was extortionate (within the meaning given in that Regulation) and was entered into in the period of 3 years ending with the commencement of the insolvent winding up.

*Regulation 38* applies *Regulations 35 to 37* to an insolvent limited liability partnership in respect of which a *désastre* is declared under the Bankruptcy (Désastre) (Jersey) Law 1990.

*Regulation 39* enables the Court to order property or records to be transferred to the insolvency manager and *Regulation 40* requires the persons listed in that Regulation to give the insolvency manager information concerning the limited liability partnership.

*Regulation 41* requires the insolvency manager to provide the Attorney General with details of any matter where it appears that any person has been guilty of an act or omission in relation to the limited liability partnership for which that person is criminally liable. The Attorney General may then refer the matter to the Jersey Financial Services Commission or the Chief Minister for further enquiry.

*Regulations 42 and 43* give investigative powers to the Commission or Chief Minister or inspector appointed to investigate, including powers to question and, if in possession of a warrant issued by the Bailiff, to search premises and retain property at those premises.

*Regulation 44* provides for it to be a contempt of the Court not to comply with a requirement under *Regulation 43* or to refuse to answer any question put to a person by an inspector for the purpose of the investigation.

*Regulation 45* provides for the admissibility of an inspector's report in proceedings.

*Regulation 46* provides for the non-disclosure of privileged information.

*Regulation 47* provides for the enforcement of any duty to deliver a document or give a notice under these Regulations.

*Regulation 48* describes the qualifications of an insolvency manager and states who may not be an insolvency manager, and *Regulation 49* provides for it to be an offence for a person to give or agree or offer to give a partner in, or a creditor of, a limited liability partnership any inducement to secure the appointment of a person as insolvency manager.

By *Regulation 50* an insolvency manager who vacates office is required to give notice of that fact to the registrar and the creditors.

*Regulation 51* requires any correspondence from an insolvent limited liability partnership that is being wound up to make clear that the limited liability partnership is subject to an insolvent winding up.

*Regulation 52* bars the right of a creditor to take other proceedings in bankruptcy, apart from applying for a declaration under the Bankruptcy (Désastre) (Jersey) Law 1990, if a limited liability partnership is subject to an insolvent winding up under these Regulations.

*Regulation 53* sets out when records of an insolvent limited liability partnership may be disposed of.

*Part 5* applies in respect of all limited liability partnerships.

*Regulation 54* provides for the recognition of proceedings in other jurisdictions relating to the dissolution or winding up of a limited liability partnership.

*Regulation 55* sets out the penalties that apply in relation to offences committed under these Regulations.

The penalty for the following offences shall be a fine not exceeding level 2 on the standard scale –

*Regulation 25(3)*: Failure by an insolvency manager to call a meeting as required by *Regulation 25(1)* and to give notice of the meeting, as required under *Regulation 25(2)*; and

*Regulation 26(3)*: Failure by an insolvency manager to make up a report of the winding up of a limited liability partnership and to call meetings as required by *Regulation 26(1)* and to give notice of the meeting, as required under *Regulation 26(2)*.

The penalty for the following offences shall be a fine not exceeding level 4 on the standard scale –

*Regulation 5(3) or 5(5)*: Failure to notify the registrar of the dissolution of a limited liability partnership;

*Regulation 6(4)*: Failure to send to the registrar the Court's order for dissolution as required by *Regulation 6(2)*;

*Regulation 7(4)*: Failure to notify the registrar of the cancellation of dissolution as required by *Regulation 7(2)*;

*Regulation 9(8)*: Failure to deliver to the Judicial Greffier a notice in respect of vesting of property in a solvent winding up of a limited liability partnership, as required by *Regulation 9(7)*;

*Regulation 12(2)*: Failure to notify the registrar of completion of winding up, as required by *Regulation 12(1)*;

*Regulation 14(8)*: Failure to deliver to the Judicial Greffier a notice in respect of vesting of property in an insolvent winding up of a limited liability partnership, as required by *Regulation 14(7)*;

*Regulation 17(8)*: Failure to deliver to the Judicial Greffier a notice in respect of vesting of property in an insolvent winding up of a limited liability partnership, as required by *Regulation 17(5)*, or deliver a notice of an insolvency manager's appointment, as required by *Regulation 17(7)*;

*Regulation 21(4)*: Failure to send to the registrar the Court's order staying proceedings in the winding up, as required by *Regulation 21(3)*;

*Regulation 27(4)*: Failure to send to the registrar a statement of any meetings held in respect of the winding up of an insolvent limited liability partnership or a copy of the insolvency manager's report, as required by *Regulation 27(1)*, or a statement that there was no quorum, as required by *Regulation 27(2)*, or a statement that the meeting was not held, as required by *Regulation 27(3)*;

*Regulation 28(3)*: Failure to send to the registrar a copy of a declaration or an order recalling a declaration where there is a *désastre* in respect of a limited liability partnership, as required by *Regulation 28(1)*;

*Regulation 29(5)*: Failure to send to the registrar an order of the Court deferring the date for the issuance of a certificate of cancellation of a limited liability partnership, as required by *Regulation 29(4)*;

*Regulation 53(4)*: Failure to comply with a direction of the Court in respect of the disposal of records of a limited liability partnership;

*Regulation 54(8)*: Failure to send to the registrar a copy of the Court's order recognizing an order of a court outside Jersey, as required by *Regulation 54(6)*.

The penalty for the following offences shall be an unlimited fine –

*Regulation 15(6)*: Failure by the dissolution manager to call a meeting of creditors as required by *Regulation 15(1)*; failure by that person to preside at the creditors' meeting, as required by *Regulation 15(3)*; failure by that person to take action in respect of the limited liability partnership without the sanction of the Court in the circumstances described in *Regulation 15(4)*;

*Regulation 50(2)*: Failure of an insolvency manager to give notice to the registrar and creditors after vacating office, as required by *Regulation 50(1)*;

*Regulation 51(2)*: Failure to include in the correspondence of an insolvent limited liability partnership being wound up a notice to the effect that it is subject to an insolvent winding up, as required by *Regulation 51(1)*.

The penalty for an offence under *Regulation 40(4)* of failing to provide information to the insolvency manager or attend on the insolvency manager when requested, as required by *Regulation 40(1)*, shall be a maximum of 6 months imprisonment and an unlimited fine.

The penalty for the following offences shall be a maximum of 2 years imprisonment and an unlimited fine –

*Regulation 42(8)*: Knowingly or recklessly providing misleading, false or deceptive information to the Commission, the Chief Minister or an inspector;

*Regulation 43(6)*: Wilfully obstructing a person executing a warrant to search premises and seize and retain material;

*Regulation 49*: Giving or offering a partner or creditor an inducement to secure the appointment of an insolvency manager.

*Regulation 56* makes a minor consequential amendment to the Money Laundering (Jersey) Order 2008, so that it refers to these Regulations.

*Regulation 57* gives the title of these Regulations and provides for these Regulations to come into force immediately upon commencement of the Law.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.



Jersey

## **DRAFT LIMITED LIABILITY PARTNERSHIPS (DISSOLUTION AND WINDING UP, ETC.) (JERSEY) REGULATIONS 201-**

### **Arrangement**

#### **Regulation**

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Jersey

## **DRAFT LIMITED LIABILITY PARTNERSHIPS (DISSOLUTION AND WINDING UP, ETC.) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Articles 2, 3, 5, 8, 9(1), 12(10), 22, 23, 24 and 37 of the Limited Liability Partnerships (Jersey) Law 201-, have made the following Regulations –

### **PART 1**

#### **INTRODUCTION**

##### **1 Interpretation**

- (1) In these Regulations “Law” means the Limited Liability Partnerships (Jersey) Law 201-.
- (2) For the purposes of these Regulations, a limited liability partnership is insolvent if it is unable to discharge its debts, excluding any liability to a partner or former partner in respect of the partner’s partnership interest, as they fall due.

### **PART 2**

#### **DISSOLUTION OF LIMITED LIABILITY PARTNERSHIP**

##### **2 Application of Part 2**

This Part applies to the dissolution of any limited liability partnership.

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**3 Dissolution upon a change in the partners in a partnership**

Subject to Regulation 4, a limited liability partnership shall not be dissolved by any change in the persons who are partners in it if the partnership agreement so provides.

**4 Dissolution upon partnership ceasing to have 2 or more partners**

Despite any provision, express or implied, of the partnership agreement to the contrary, a limited liability partnership shall be dissolved immediately upon there ceasing to be 2 or more partners in the partnership.

**5 Dissolution by act of partner or other occurrence**

- (1) Where a limited liability partnership is dissolved by any act of a partner or by any occurrence other than under Regulation 6, the secretary shall, within 28 days after the date of dissolution, deliver to the registrar a statement of dissolution signed by the secretary.
- (2) Upon receiving a statement under paragraph (1), the registrar shall register the statement and issue a certificate of dissolution and shall –
  - (a) serve the certificate on the limited liability partnership and secretary (if any);
  - (b) register the certificate; and
  - (c) publish a notice stating that such a certificate has been issued.
- (3) Subject to paragraph (4) and (5), a secretary that fails to comply with paragraph (1) shall be guilty of an offence.
- (4) A secretary shall not be guilty of an offence under paragraph (3) unless the secretary knew, or the circumstances of the dissolution are such that the secretary ought to have known, that the partnership had dissolved.
- (5) If the limited liability partnership has no secretary on the date of dissolution the duty of the secretary described in paragraph (1) shall rest with the partners who were remaining on that date and accordingly if none of those partners comply with paragraph (1) they shall all be jointly and severally guilty of an offence.
- (6) Subject to Article 22(6) of the Law, a certificate issued under paragraph (2) is conclusive evidence that the limited liability partnership is dissolved.

**6 Power of Court to order dissolution**

- (1) The Court may, on the application of any partner in a limited liability partnership, order the dissolution of the partnership in any of the following cases –
  - (a) when a partner, other than the partner making the application, becomes in any way permanently incapable of performing that partner's part of the partnership agreement;
  - (b) when the Court, having regard to the nature of the partnership, is of the opinion that a partner, other than the partner making the

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- application, has been guilty of conduct that would prejudicially affect the carrying on of the partnership business;
- (c) when a partner, other than the partner making the application, wilfully or persistently commits a breach of the partnership agreement, or otherwise behaves in matters relating to the partnership business in such a manner that it is not reasonably practicable for the other partner or partners to carry on that business in partnership with that partner;
  - (d) when the partnership business can only be carried on at a loss; or
  - (e) whenever (in any case) circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.
- (2) Where the Court orders the dissolution of a limited liability partnership under paragraph (1), the partner making the application shall deliver a copy of the order to the registrar within 28 days after it is made.
  - (3) Upon receiving an order made under paragraph (1), the registrar shall –
    - (a) register the order;
    - (b) issue a certificate of dissolution; and
    - (c) publish a notice stating that such a certificate has been issued.
  - (4) A partner making the application under this Regulation who fails to comply with paragraph (2) shall be guilty of an offence.
  - (5) Subject to Article 22(6) of the Law, a certificate issued under paragraph (3) is conclusive evidence that the limited liability partnership is dissolved.

## **7 Continuation of partnership following dissolution**

- (1) Where, following dissolution of a limited liability partnership but before completion of the winding up of its affairs, 2 or more of the partners are to acquire the partnership interests of each of the remaining partners, either by agreement or upon a direction of the Court pursuant to Regulation 10(2), then upon such acquisition taking place –
  - (a) the winding up of the affairs of the limited liability partnership shall not be completed and the partnership shall continue as if it had not been dissolved; and
  - (b) the partners whose interests are acquired shall be taken to retire from the limited liability partnership.
- (2) The limited liability partnership shall, within 28 days after the acquisition described in paragraph (1), send to the registrar a statement of cancellation of dissolution signed by one of the acquiring partners, specifying the date when the retiring partner's interests are to be acquired, in addition to any statement that must be sent under Article 19 of the Law.
- (3) Upon receiving a statement made pursuant to paragraph (2) the registrar shall register the statement and issue a certificate to that effect, and shall –

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- (a) serve the certificate on the limited liability partnership and secretary (if any);
  - (b) register the certificate; and
  - (c) publish a notice stating that such a certificate has been issued.
- (4) A limited liability partnership that fails to comply with paragraph (2) shall be guilty of an offence.
- (5) A certificate issued under paragraph (3) is conclusive evidence that the certificate of dissolution issued under Regulation 5(2) in respect of the limited liability partnership is void.
- (6) For the purposes of Article 22(6)(b) of the Law, the Court may make an order declaring a certificate of dissolution void under Article 22(6) of the Law if –
- (a) a certificate of dissolution was issued in respect of the limited liability partnership under Regulation 5, or 6, or this Regulation;
  - (b) Part 4 does not apply in respect of the limited liability partnership; and
  - (c) all persons who were partners in the limited liability partnership immediately before its dissolution consent to the order being made.
- (7) For the purposes of Article 23(5)(b) of the Law, the Court may make an order declaring a certificate of cancellation void under Article 23(5) of the Law if –
- (a) the limited liability partnership was not wound up under Part 4; and
  - (b) all persons who were partners in the limited liability partnership immediately before its dissolution consent to the order being made.

### **PART 3**

#### **WINDING UP, ETC. OF SOLVENT LIMITED LIABILITY PARTNERSHIP**

##### **8 Application of Part 3**

This Part applies in respect of the winding up of a solvent limited liability partnership.

##### **9 Winding up**

- (1) A limited liability partnership that is solvent at the date of dissolution shall have its affairs wound up by a dissolution manager in accordance with this Part.
- (2) Subject to paragraph (3) –
  - (a) where the limited liability partnership is dissolved in the circumstances described in Regulation 4, the dissolution manager shall be the person who, at the date of dissolution, was the last remaining partner or –

- 
- (i) if that partner is deceased, his or her personal representatives, or
    - (ii) if that partner is a body corporate that is in the course of being wound up, the liquidator or person winding up the affairs of that partner;
  - (b) in the event of the dissolution of a limited liability partnership in any other circumstances, the dissolution manager shall be the person appointed by the partners for the purpose or, if none, shall be all of the partners jointly.
- (3) The Court may appoint or remove a dissolution manager upon the application of –
- (a) a partner in the partnership;
  - (b) a person who is the dissolution manager by virtue of paragraph (2) or previously appointed as the dissolution manager under this paragraph; or
  - (c) any other person who appears to the Court to be an interested party, where the Court is satisfied that a person described in subparagraph (a) or (b) is unable or unwilling to make an application under this paragraph.
- (4) Subject to paragraphs (5) and (6), the dissolution manager shall, as agent for the limited liability partnership, do whatever is necessary or desirable to achieve a beneficial winding up of the limited liability partnership's affairs, or otherwise as the partnership agreement may provide.
- (5) If, at any stage during the winding up of a limited liability partnership that was, or is believed to have been, solvent at the date of dissolution, it becomes apparent that it was insolvent at that date or has become insolvent following dissolution, the dissolution manager shall –
- (a) cease winding it up pursuant to this Part; and
  - (b) take the steps the dissolution manager is required to take under Part 4.
- (6) Upon the dissolution of a limited liability partnership in the circumstances described in Regulation 4, or upon the limited liability partnership ceasing to have 2 or more partners at any time during the winding up of its affairs following its dissolution in any other circumstances –
- (a) the limited liability partnership shall cease to be a legal person;
  - (b) the duty to appoint a secretary under Article 8 of the Law shall cease to apply;
  - (c) the limited liability partnership property vested in the limited liability partnership and the beneficial interest of the limited liability partnership in any limited liability partnership property held by any person on its behalf, shall vest in the dissolution manager;
  - (d) the dissolution manager shall, in the person's capacity as such, do whatever is necessary or desirable to achieve a beneficial winding

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- up of the limited liability partnership's affairs, or otherwise as the partnership agreement may provide;
- (e) any proceedings which might have been continued or commenced against the limited liability partnership may be continued or commenced against the dissolution manager in that capacity;
  - (f) any judgment obtained against the limited liability partnership prior to its ceasing to have 2 or more partners and any judgment obtained against the dissolution manager in any proceedings continued or commenced in accordance with sub-paragraph (e) shall only be enforceable against the limited liability partnership property.
- (7) Where the name of a limited liability partnership is inscribed in the Public Registry as the holder of, or as having an interest in, immovable property, the dissolution manager, in whom that property or interest vests by virtue of paragraph (6)(c) shall deliver to the Judicial Greffier notice of such vesting within 28 days after the property so vests.
- (8) It shall be an offence for the dissolution manager to fail to comply with paragraph (7).

#### **10 Power of Court to give directions as to winding up**

- (1) The Court may give such directions as it thinks fit in the course of the winding up of the affairs of a limited liability partnership upon the application of –
- (a) any partner in the partnership;
  - (b) any creditor of the partnership;
  - (c) the dissolution manager; or
  - (d) any other person who appears to the Court to be an interested party, where the Court is satisfied that a person described in sub-paragraph (a), (b) or (c) is unable or unwilling to make an application under this paragraph.
- (2) Without prejudice to the discretion conferred by paragraph (1), on an application by the relevant majority, the Court may give a direction that the applicants purchase the partnership interest of each of the remaining partners at such a price and otherwise upon such terms as it thinks fit.
- (3) In paragraph (2), “relevant majority” in relation to a limited liability partnership shall have the meaning assigned to it for the purposes of that paragraph by the partnership agreement or, if no meaning is so assigned, shall mean a majority of the partners of which such partnership was composed at the date of its dissolution, being either –
- (a) a majority of the partners by number; or
  - (b) such number of partners as were at the date of dissolution together entitled to a majority share of the limited liability partnership property remaining upon dissolution, after payment of any liabilities described in Regulation 11(1).
- (4) In paragraph (2), the reference to the partnership interest of each of the remaining partners includes the partnership interest of any deceased

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partner and of any partner, other than an individual, which has ceased to exist.

## **11 Settling accounts on winding up**

- (1) Where accounts are settled in the course of the winding up of the affairs of a limited liability partnership, the liabilities of the partnership shall be paid in the following order of priority –
  - (a) liabilities to creditors, excluding any partner or former partner in the limited liability partnership in respect of the partner's or former partner's partnership interest or in respect of any loan made by the partner or former partner to the partnership for any purpose; then
  - (b) subject to the partnership agreement and to any agreement between the partnership and the former partner in question –
    - (i) liabilities to former partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
    - (ii) liabilities to former partners in the limited liability partnership in respect of their partnership interests; then
  - (c) subject to the partnership agreement –
    - (i) liabilities to partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
    - (ii) liabilities to partners in the limited liability partnership in respect of their partnership interests.
- (2) Subject to the partnership agreement, any limited liability partnership property remaining after payment of the liabilities described in paragraph (1) shall be distributed equally to the partners.

## **12 Completion of winding up**

- (1) Within 28 days after the completion of the winding up of the affairs of a limited liability partnership, a statement to that effect signed by the dissolution manager shall be delivered to the registrar.
- (2) It shall be an offence for the dissolution manager to fail to comply with paragraph (1).

# **PART 4**

## **WINDING UP, ETC. OF INSOLVENT LIMITED LIABILITY PARTNERSHIP**

### **13 Application and interpretation of Part 4**

- (1) This Part applies in respect of the winding up of an insolvent limited liability partnership, whether insolvent at the date of dissolution or becoming insolvent following dissolution.



- (2) In this Part –
- “insolvency manager” means, in relation to an insolvent limited liability partnership, the person for the time being appointed under Regulation 17, 19 or 20 to be responsible for its insolvent winding up;
- “insolvency committee” means, in relation to an insolvent limited liability partnership, the committee appointed under Regulation 18.

## 14 Winding up

- (1) Subject to paragraphs (2) and (3) –
- (a) where the limited liability partnership is dissolved in the circumstances described in Regulation 4, the dissolution manager shall be the person who, at the date of dissolution, was the last remaining partner or –
- (i) if that partner is deceased, his or her personal representatives, or
- (ii) if that partner is a body corporate that is in the course of being wound up, the liquidator or person winding up the affairs of that partner;
- (b) in the event of the dissolution of a limited liability partnership in any other circumstances, the dissolution manager shall be the person appointed by the partners for the purpose or, if none, shall be all of the partners jointly;
- (2) If the winding up of the affairs of a limited liability partnership began at a stage during which the limited liability partnership was, or was believed to have been, solvent at the date of dissolution, the person who was the dissolution manager under Part 3 shall be the dissolution manager for the purposes of this Part.
- (3) The Court may appoint a dissolution manager upon the application of –
- (a) a partner in the limited liability partnership;
- (b) a person who is the dissolution manager by virtue of paragraph (1) or (2) or having been appointed as the dissolution manager under this paragraph; or
- (c) any other person who appears to the Court to be an interested party, where the Court is satisfied that a person described in subparagraph (a) or (b) is unable or unwilling to make an application under this paragraph.
- (4) No appointment may be made pursuant to paragraph (3) in respect of an insolvent limited liability partnership after an insolvency manager is first appointed for it.
- (5) Notwithstanding that a partner continues to be an agent of the partnership, the partner’s ability to bind the insolvent limited liability partnership shall cease upon dissolution of the limited liability partnership.
- (6) Upon the dissolution of a limited liability partnership in the circumstances described in Regulation 4, or upon the limited liability

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partnership ceasing to have 2 or more partners at any time during the winding up of its affairs following its dissolution in any other circumstances –

- (a) the limited liability partnership shall cease to be a legal person;
  - (b) the duty to appoint a secretary under Article 8 of the Law shall cease to apply;
  - (c) the limited liability partnership property vested in the limited liability partnership and the beneficial interest of the limited liability partnership in any limited liability partnership property held by any person on its behalf, shall vest in the dissolution manager;
  - (d) any proceedings which might have been continued or commenced against the limited liability partnership may be continued or commenced against the dissolution manager in that capacity;
  - (e) any judgment obtained against the limited liability partnership prior to its dissolution, and any judgment obtained against the dissolution manager in any proceedings continued or commenced in accordance with sub-paragraph (d), shall only be enforceable against the limited liability partnership property.
- (7) Where the name of a limited liability partnership is inscribed in the Public Registry as the holder of, or as having an interest in, immovable property, the dissolution manager, in whom that property or interest vests by virtue of paragraph (6)(c) shall deliver to the Judicial Greffier notice of such vesting within 28 days after the property so vests.
- (8) It shall be an offence for the dissolution manager to fail to comply with paragraph (7).

## **15 Partnership insolvent upon or following dissolution**

- (1) If the dissolution manager becomes aware, or forms the opinion, that the limited liability partnership is insolvent at the date of dissolution or at any time following dissolution, the dissolution manager –
- (a) shall within 7 days of becoming aware, or forming the opinion, send a notice of that fact to the registrar; and
  - (b) shall –
    - (i) by not less than 14 days' notice, call a meeting of all known creditors of the limited liability partnership, to be held within Jersey within 28 days of sending the notice referred to in sub-paragraph (a) and, in the notice, nominate an insolvency manager,
    - (ii) when that notice is given to the creditors, deliver a copy of it to the registrar,
    - (iii) not less than 10 days before the day for which the meeting is called, publish a notice of the meeting,
    - (iv) during the period before the creditors' meeting is held, furnish any creditor free of charge with such information

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- concerning the affairs of the limited liability partnership as the creditor may reasonably request, and
- (v) make out a statement as to the affairs of the limited liability partnership and lay that statement before the creditors' meeting.
- (2) If the dissolution manager is qualified for appointment as the insolvency manager for the limited liability partnership, the dissolution manager may nominate himself or herself under paragraph (1)(b)(i).
  - (3) The dissolution manager shall be the chairman at the creditors' meeting.
  - (4) During the period after which the dissolution manager becomes aware or forms the opinion that the limited liability partnership is insolvent and before the appointment of an insolvency manager, the dissolution manager shall not take any action, except action sanctioned by the Court, in respect of the limited liability partnership, other than to secure compliance with this Regulation or to protect and preserve the limited liability partnership property.
  - (5) The insolvent winding up of a limited liability partnership commences –
    - (a) where the partnership is insolvent upon dissolution, on the date of dissolution; and
    - (b) where the partnership becomes insolvent following dissolution, on the day on which the creditors' meeting is held.
  - (6) A dissolution manager who fails to comply with paragraph (1), (3) or (4) shall be guilty of an offence.

## **16 Quorum and procedure at creditors' meeting**

- (1) Any meeting of creditors of an insolvent limited liability partnership is competent to act if a quorum is present.
- (2) A quorum is at least one creditor entitled to vote being present or represented by proxy by any person.
- (3) Every creditor who has been given notice of a creditors' meeting shall be entitled to vote at the meeting or any adjournment of it.
- (4) Votes shall be calculated according to the amount of the creditor's debt on the day the insolvent winding up commences.
- (5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the dissolution manager (or, if an insolvency manager has been appointed, the insolvency manager) agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote.
- (6) For a resolution to pass at a creditors' meeting it must be supported by creditors the values of whose votes are at least half the value of the votes of the creditors who vote on the resolution.

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**17 Appointment of insolvency manager**

- (1) The creditors at a creditors' meeting may nominate an insolvency manager.
- (2) The person nominated by the creditors to be insolvency manager or, if none, the person nominated by the dissolution manager, is appointed with effect from the conclusion of the creditors' meeting.
- (3) A creditor or partner of the limited liability partnership or the dissolution manager may, within 7 days after the day on which the nomination was made by the creditors, apply to the Court for an order either –
  - (a) directing that the person nominated by the dissolution manager shall be the insolvency manager instead of or jointly with the person nominated by the creditors; or
  - (b) appointing some other person to be the insolvency manager.
- (4) Upon the appointment of the insolvency manager –
  - (a) all the powers and duties of the dissolution manager shall cease;
  - (b) the appointment of a secretary pursuant to Article 8 of the Law shall cease, and the duties of a secretary under the Law or these Regulations shall cease;
  - (c) any limited liability partnership property and any beneficial interest of the limited liability partnership in any limited liability partnership property vested in the dissolution manager pursuant to Regulation 9(6)(c) or 14(6)(c) shall vest in the insolvency manager; and
  - (d) any proceedings which might have been continued or commenced against the limited liability partnership, or against the dissolution manager pursuant to Regulation 9(6)(e) or 14(6)(d), may only be continued or commenced against the insolvency manager in the insolvency manager's capacity as such.
- (5) Where the name of the dissolution manager is inscribed in the Public Registry as the holder of, or as having an interest in, immovable property which vests in the insolvency manager by virtue of paragraph (4)(c), the insolvency manager shall deliver to the Judicial Greffier notice of the vesting, within 28 days after the property so vests.
- (6) Any judgment –
  - (a) obtained against the limited liability partnership prior to its dissolution, or obtained against its dissolution manager under Article 9(6)(f), which has not been satisfied before the limited liability partnership became insolvent, or
  - (b) obtained against the insolvency manager in the insolvency manager's capacity as such in any proceedings continued or commenced in accordance with paragraph (4)(d),shall only be enforceable against the limited liability partnership property.

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- (7) The insolvency manager shall, within 14 days of the insolvency manager's appointment, deliver notice thereof to the registrar and to the creditors.
  - (8) An insolvency manager who fails to comply with paragraphs (5) or (7) shall be guilty of an offence.

## **18 Appointment of insolvency committee**

- (1) A creditors' meeting may appoint an insolvency committee consisting of not more than 5 persons to exercise the functions conferred on it by this Part.
- (2) If an insolvency committee is appointed, the partners of the limited liability partnership may appoint such number of persons not exceeding 5 as they think fit to act as members of that insolvency committee.
- (3) The creditors may resolve that all or any of the persons so appointed by the partners ought not to be members of the insolvency committee and, if the creditors so resolve –
  - (a) the persons mentioned in the resolution are not then, unless the Court otherwise directs, qualified to act as members of that insolvency committee; and
  - (b) on an application to the Court under this provision, the Court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

## **19 Remuneration of and vacancy in office of insolvency manager**

- (1) An insolvency manager is entitled to receive such remuneration as is agreed between the insolvency manager and the insolvency committee or, if there is no insolvency committee, between the insolvency manager and the creditors or, failing any such agreement, as is fixed by the Court.
- (2) The creditors at a creditor's meeting may remove an insolvency manager other than an insolvency manager appointed by the Court.
- (3) If a vacancy occurs, by death, resignation or otherwise, in the office of the insolvency manager –
  - (a) the creditors may appoint another insolvency manager, except when the appointment in respect of which the vacancy now arises was by the Court; and
  - (b) the Court may appoint another insolvency manager upon an application made under Regulation 17(3) when the appointment of in respect of which the vacancy now arises was by the Court.
- (4) Where a vacancy in the office of insolvency manager is filled, either by appointment by the creditors or by the Court, Regulation 17(4), (5), (6), (7) and (8) shall apply for the purposes of notification of the appointment to the registrar and the vesting of such property in, the continuation and commencement of such proceedings against and the payment of any amount to, the new insolvency manager as was formerly vested in or might have been continued or commenced against or paid to, the previous

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insolvency manager in the insolvency manager's capacity as such, as if any reference in them to the person responsible for winding up the affairs of the limited liability partnership were a reference to the previous insolvency manager and any reference to the insolvency manager were a reference to the new insolvency manager.

## **20 Appointment or removal by the Court of insolvency manager**

- (1) If for any reason there is no insolvency manager in an insolvent winding up, the Court may appoint such a person.
- (2) The Court may, on the application of any person who appears to the Court to be an interested party, remove an insolvency manager and appoint another.

## **21 Reference of questions and powers to the Court**

- (1) The insolvency manager, a partner in the partnership or a creditor of the partnership may apply to the Court for the Court to –
  - (a) determine a question arising in an insolvent winding up; or
  - (b) exercise all or any of the powers which the Court or the Viscount might exercise if a declaration had been made in relation to the limited liability partnership under the Bankruptcy (Désastre) (Jersey) Law 1990.
- (2) The Court may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.
- (3) An Act of the Court recording the making of an order under this Regulation staying the proceedings in the winding up shall, within 14 days after the making of the order, be delivered by the insolvency manager, or otherwise as may be ordered by the Court, to the registrar, who shall register it.
- (4) A person who fails to deliver an order to the registrar, as required by paragraph (3), shall be guilty of an offence.

## **22 Application of the law relating to désastre**

- (1) Subject to paragraph (2), in an insolvent winding up, the same rules prevail with regard to –
  - (a) the respective rights of secured and unsecured creditors;
  - (b) debts provable;
  - (c) the time and manner of proving any debt;
  - (d) the admission and rejection of the proof of any debt;
  - (e) the setting off of any debts; or
  - (f) subject to the provision in Regulation 24(1), the order of payment of debts,

as are in force for the time being with respect to persons against whom a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990 with the substitution of references to the insolvency manager and to the commencement of the insolvent winding up respectively for references to the Viscount and to the date of the declaration.

- (2) Any surplus remaining after payment of the debts proved in the insolvent winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the insolvent winding up –
  - (a) in respect of the period during which they have been outstanding since the commencement of the insolvent winding up; and
  - (b) at the rate of interest that applied in respect of those debts before the winding up.

### **23 Arrangement when binding on creditors**

- (1) An arrangement entered into between a limited liability partnership and its creditors immediately preceding the commencement of an insolvent winding up or in the course of an insolvent winding up, or between the insolvency manager and the creditors in the course of an insolvent winding up, is (subject to the right of appeal under paragraph (2)) binding –
  - (a) on the limited liability partnership; and
  - (b) on the creditors, if acceded to by three-quarters in number and value of them.
- (2) A creditor may, within 3 weeks from the completion of the arrangement, appeal to the Court against it and the Court may upon such appeal amend, vary or confirm the arrangement, as it thinks just.

### **24 Settling accounts on winding up**

- (1) Where accounts are settled in the course of the winding up of the affairs of a limited liability partnership, the liabilities of the partnership shall be paid in the following order of priority –
  - (a) subject to the provisions of any enactment as to preferential payments, liabilities to creditors, excluding any partner or former partner in the limited liability partnership in respect of the partner's or former partner's partnership interest or in respect of any loan made by the partner or former partner to the partnership for any purpose; then
  - (b) subject to the partnership agreement and to any agreement between the partnership and the former partner in question –
    - (i) liabilities to former partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
    - (ii) liabilities to former partners in the limited liability partnership in respect of their partnership interests; then
  - (c) subject to the partnership agreement –

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- (i) liabilities to partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
    - (ii) liabilities to partners in the limited liability partnership in respect of their partnership interests.
  - (2) Subject to the partnership agreement, any limited liability partnership property remaining after payment of the liabilities described in paragraph (1) shall be distributed equally to the partners.
  - (3) All costs, charges and expenses properly incurred in the winding up of an insolvent limited liability partnership, including the remuneration of the insolvency manager, are payable out of the limited liability partnership property in accordance with Regulation 22(1) and paragraph (1).

## **25 Meetings of insolvent limited liability partnership and creditors**

- (1) If an insolvent winding up continues for more than 12 months, the insolvency manager shall call a meeting of the partners in the limited liability partnership and a meeting of its creditors, to be held on the first convenient date within 3 months after the end of the first 12 months from the commencement of the insolvent winding up, and of each succeeding 12 months or such longer period as the Commission may allow, and shall lay before the meetings an account of the insolvency manager's acts and dealings and of the conduct of the winding up during the preceding 12 months.
- (2) Notice of each meeting, together with a copy of the insolvency manager's account, must be served on the partners and creditors of the limited liability partnership not less than 21 days before the meeting.
- (3) For the purpose of paragraph (2) service shall be treated as having been effected –
  - (a) on a partner if the notice and account are delivered to the partner either by such means as the insolvency manager and the partner agree or, in the absence of any such agreement, in accordance with Article 25 of the Law; and
  - (b) on a creditor if the notice and account are delivered to the creditor either by such means as the insolvency manager and creditor agree, or in the absence of any such agreement, if they are served on the creditor by post.
- (4) An insolvency manager who fails to comply with paragraph (1) or (2) shall be guilty of an offence.

## **26 Insolvency manager's report on completion of winding up**

- (1) As soon as the affairs of an insolvent limited liability partnership are fully wound up, the insolvency manager shall prepare a report of the winding up, showing how it has been conducted and how the limited liability partnership property has been disposed of, and thereupon shall call a meeting of the partners in the limited liability partnership and a meeting



- of its creditors for the purpose of laying the report before the meetings and giving an explanation of it.
- (2) Notice of each meeting, together with a copy of the insolvency manager's report of the winding up, must be served on the partners and creditors of the limited liability partnership not less than 21 days before the meeting.
  - (3) For the purpose of paragraph (2) service shall be treated as having been effected –
    - (a) on a partner if the notice and account are delivered to the partner either by such means as the insolvency manager and the partner agree or, in the absence of any such agreement, in accordance with Article 25 of the Law; and
    - (b) on a creditor if the notice and report are delivered to the creditor either by such means as the insolvency manager and creditor agree, or in the absence of any such agreement, if they are served on the creditor by post.
  - (4) An insolvency manager who fails to comply with paragraph (1) or (2) shall be guilty of an offence.

## **27 Completion of winding up**

- (1) Within 7 days after the date of the meetings described in Regulation 26 (or, if they are not held on the same day, after the date of the later one) the insolvency manager shall deliver to the registrar –
  - (a) subject to paragraphs (2) and (3), a statement signed by the insolvency manager of the holding of the meetings and their dates; and
  - (b) a copy of the insolvency manager's report.
- (2) If a quorum is not present at the creditors' meeting, the insolvency manager shall, in lieu of the statement required by paragraph (1)(a), deliver to the registrar a statement that the meeting was duly called and that no quorum was present.
- (3) If all the partners, or so many of the partners as the partnership agreement requires, are not present at the partners' meeting, the insolvency manager shall, in lieu of the statement required by paragraph (1)(a), deliver to the registrar a statement that the meeting was duly called but not held.
- (4) An insolvency manager who fails to comply with paragraph (1), (2) or (3) shall be guilty of an offence.

## **28 Effect of declaration that a partnership is *en désastre***

- (1) Where a declaration, or an order recalling a declaration, is made in respect of a limited liability partnership, the limited liability partnership shall deliver a copy of the declaration or order to the registrar within 28 days of its being made.
- (2) Upon receiving a copy of a declaration or of an order recalling a declaration, the registrar shall register it and issue a certificate to that effect.

- (3) A limited liability partnership that fails to comply with paragraph (1) shall be guilty of an offence.
- (4) In this Regulation –  
“declaration” shall have the same meaning as in the Bankruptcy (Désastre) (Jersey) Law 1990; and  
“order recalling a declaration” shall be construed in accordance with Article 7 of that Law.

## **29 Cancellation of registration following insolvent winding up etc.**

- (1) Upon receipt of –
  - (a) a statement delivered to the registrar under Regulation 27; or
  - (b) notification under Article 36(3) of the Bankruptcy (Désastre) (Jersey) Law 1990,in respect of an insolvent limited liability partnership, the registrar shall forthwith register the statement or notification.
- (2) Subject to paragraph (3), at the end of 3 months from the registration of the statement or notification, the registrar shall cancel the entry in the register relating to the limited liability partnership and issue a certificate of cancellation to the insolvency manager or the Viscount, as the case may require.
- (3) The Court may, on the application of the insolvency manager or Viscount, as the case may require, or of another person who appears to the Court to be interested, make an order deferring the date on which a certificate of cancellation of registration is issued to such date as the Court thinks fit.
- (4) The person on whose application an order of the Court under paragraph (3) is made shall, within 14 days after the making of the order, deliver to the registrar the order of the Court for registration.
- (5) A person on whose application the order is made who fails to comply with paragraph (4) shall be guilty of an offence.

## **30 Powers and duties of insolvency manager**

- (1) An insolvency manager may, with the sanction of the Court or the insolvency committee (or, if there is no such committee, a meeting of the creditors) –
  - (a) pay a class of creditors in full;
  - (b) compromise any claim by or against the limited liability partnership, or by or against the dissolution manager or the insolvency manager under these Regulations.
- (2) An insolvency manager may, without sanction, do anything, other than an act within paragraph (1), that may be required for the beneficial winding up of the limited liability partnership’s affairs.

- (3) An insolvency manager may summon a meeting of the partners of the limited liability partnership for the purpose of obtaining their sanction for any other purpose the insolvency manager may think fit.
- (4) The insolvency manager shall pay the debts of the limited liability partnership in accordance with this Part.
- (5) The appointment or nomination of more than one insolvency manager shall declare whether any act to be done is to be done by all or any one or more of them and, in default, any such act may be done by 2 or more of them.

### **31 Power to disclaim onerous property**

- (1) The insolvency manager may, within 6 months after the commencement of the insolvent winding up, by the giving of notice signed by the insolvency manager and referring to this Regulation and Regulation 32 to each person who is interested in, or under any liability in respect of, the property disclaimed, disclaim any onerous movable property, or any onerous immovable property, and may do so notwithstanding that the insolvency manager has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) For the purposes of this Regulation –
  - (a) onerous movable property is any –
    - (i) unprofitable contract, and
    - (ii) other movable property of the limited liability partnership which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act;
  - (b) onerous immovable property is any immovable property of the limited liability partnership situated outside Jersey and having the characteristics mentioned in sub-paragraph (a)(ii).
- (3) A disclaimer under this Regulation –
  - (a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the limited liability partnership in or in respect of the property disclaimed; but
  - (b) shall not, except so far as is necessary for the purpose of releasing the limited liability partnership from liability, affect the rights or liabilities of any other person.
- (4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Regulation shall be deemed to be a creditor of the limited liability partnership to the extent of the loss or damage in the winding up.

### **32 Power of Court in respect of disclaimed property**

- (1) This Regulation applies where the insolvency manager has disclaimed property under Regulation 31.
- (2) An application may be made to the Court under this Regulation by –

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- (a) a person who claims an interest in the disclaimed property; or
    - (b) a person who is under a liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
  - (3) Subject to paragraph (4), the Court may, on an application under this Regulation, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –
    - (a) a person entitled to it or a trustee for such a person; or
    - (b) a person subject to a liability mentioned in paragraph (2)(b) or a trustee for such a person.
  - (4) The Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
  - (5) The effect of an order under this Regulation shall be taken into account in assessing for the purpose of Regulation 31(4) the extent of loss or damage sustained by a person in consequence of the disclaimer.

### **33 Unenforceability of liens on records**

- (1) Subject to paragraph (2), in an insolvent winding up, a lien or other right to retain possession of any records of a limited liability partnership shall be unenforceable to the extent that its enforcement would deny possession of those records to the insolvency manager.
- (2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

### **34 Transactions at an undervalue and preferences**

- (1) Where an insolvent limited liability partnership has at a relevant time –
  - (a) entered into a transaction with any person at an undervalue; or
  - (b) given a preference to any person,the insolvency manager may apply to the Court for such order as the Court thinks fit for restoring the position to what it would have been if the limited liability partnership had not entered into that transaction or given that preference, as the case may be.
- (2) For the purposes of this Regulation, a limited liability partnership enters into a transaction with a person at an undervalue if the limited liability partnership –
  - (a) makes a gift to that person or otherwise enters into a transaction with that person on terms for which there is no “cause”; or
  - (b) enters into a transaction with that person for a “cause” the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the “cause” provided by the limited liability partnership.

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- (3) For the purposes of this Regulation, a limited liability partnership gives a preference to a person if –
- (a) that person is one of the creditors of the limited liability partnership or a surety or guarantor for any of the debts or other liabilities of the limited liability partnership; and
  - (b) the limited liability partnership –
    - (i) does anything, or
    - (ii) suffers anything to be done,which has the effect of putting that person into a position which, in the event of the insolvent winding up of the limited liability partnership, will be better than the position the person would have been in if that thing had not been done.
- (4) The Court shall not make an order under this Regulation in respect of a preference given to any person unless the limited liability partnership which gave it was influenced in deciding to give it by a desire to produce in relation to that person the effect referred to in paragraph (3)(b).
- (5) Subject to paragraph (6), the time at which a limited liability partnership enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given –
- (a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the date of commencement of the insolvent winding up;
  - (b) in the case of a preference which is not a transaction at an undervalue, at a time in the period of one year ending with that date.
- (6) Subject to paragraph (7), where a limited liability partnership enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (5)(a) or (b), that time is not a relevant time unless the limited liability partnership –
- (a) is at that time unable to pay its debts as they fall due; or
  - (b) becomes unable to pay its debts as they fall due in consequence of the transaction or preference.
- (7) Paragraph (6) shall not apply to a transaction at an undervalue which takes place less than 2 years before the date of commencement of the insolvent winding up.
- (8) In this Regulation, “cause” has the meaning assigned to it by the customary law of Jersey.

### **35 Responsibility for wrongful trading**

- (1) Where any limited liability partnership property, including a share in the partnership profits, is withdrawn by a partner at a time when the partnership is unable to pay its debts, or if the partnership becomes unable to pay its debts as a result of the withdrawal, the partner shall be liable for any debt or loss to which Article 4(1) of the Law applies, but the partner’s liability shall be limited to an amount equal to the value of

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the withdrawal, less any amount previously recovered from him by virtue of this Regulation or Article 5 or 12 of the Law.

- (2) Notwithstanding Article 5 of the Law but subject to paragraph (4), if, in the course of an insolvent winding up, it appears that paragraph (1) applies in relation to a person who is or has been a partner of the limited liability partnership, the Court, on the application of the insolvency manager, may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the limited liability partnership arising after the time referred to in paragraph (3).
- (3) This paragraph applies in relation to a person if –
  - (a) at some time before the date of commencement of the insolvent winding up that person –
    - (i) knew that there was no reasonable prospect that the limited liability partnership would avoid insolvency, or
    - (ii) on the facts known to the person was reckless as to whether the limited liability partnership would avoid insolvency; and
  - (b) that person was a partner in the limited liability partnership at that time.
- (4) For the purposes of paragraph (3), a person shall not be treated as having had knowledge of any matter by reason only that another partner in the limited liability partnership had such knowledge.
- (4) The Court shall not make an order under paragraph (2) with respect to any person if it is satisfied that after either condition specified in paragraph (3)(a) was first satisfied in relation to the person that person took reasonable steps with a view to minimizing the potential loss to creditors of the limited liability partnership.
- (5) On the hearing of an application under this Regulation, the insolvency manager may give evidence or call witnesses.

### **36 Responsibility for fraudulent trading**

- (1) If, in the course of an insolvent winding up, it appears that any business of the limited liability partnership has been carried on with intent to defraud creditors of the limited liability partnership or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the insolvency manager, order that persons who were knowing parties to the carrying on of the business in that manner are to be liable to make such contributions to the limited liability partnership property as the Court thinks proper.
- (2) For the purposes of paragraph (1) a partner in a limited liability partnership shall not be treated as having been a knowing party to the carrying on of the business in the manner described in that paragraph by reason only that another partner in the limited liability partnership was knowingly such a party.
- (3) On the hearing of an application under this Regulation the insolvency manager may give evidence or call witnesses.

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- (4) Where the Court makes an order under this Regulation or Regulation 35, it may give such further directions as it thinks proper for giving effect to the order.
  - (5) Where the Court makes an order under this Regulation or Regulation 35 in relation to a person who is a creditor of the limited liability partnership, it may direct that the whole or part of a debt owed by the limited liability partnership to that person and any interest thereon shall rank in priority after all other debts owed by the limited liability partnership and after any interest on those debts.
  - (6) This Regulation and Regulation 35 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the order under paragraph (1) is to be made.

### **37 Extortionate credit transactions**

- (1) This Regulation applies in an insolvent winding up where the limited liability partnership is, or has been, a party to a transaction for, or involving, the provision of credit to the limited liability partnership.
- (2) The Court may, on the application of the insolvency manager, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with the commencement of the insolvent winding up.
- (3) For the purposes of this Regulation, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –
  - (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
  - (b) it otherwise grossly contravened ordinary principles of fair dealing,and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Regulation is, or as the case may be, was extortionate.
- (4) An order under this Regulation with respect to a transaction may contain one or more of the following as the Court thinks fit –
  - (a) provision setting aside the whole or part of an obligation created by the transaction;
  - (b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;
  - (c) provision requiring a person who is or was a party to the transaction to pay to the insolvency manager sums paid to that person, by virtue of the transaction, by the limited liability partnership;
  - (d) provision requiring a person to surrender to the insolvency manager property held by the person as security for the purposes of the transaction;
  - (e) provision directing accounts to be taken between any persons.

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**38 Application of provisions to insolvent limited liability partnership  
*en désastre***

Regulations 35, 36, and 37 shall apply to an insolvent limited liability partnership in respect of which a *désastre* is declared under the Bankruptcy (Désastre) (Jersey) Law 1990 as if –

- (a) any reference to an insolvent winding up was a reference to a *désastre*; and
- (b) any reference to the insolvency manager was a reference to the Viscount.

**39 Delivery and seizure of property**

(1) Where a person has in the person's possession or control property or records to which a limited liability partnership appears in an insolvent winding up to be entitled, the Court may require that person forthwith (or within a period which the Court may direct) to pay, deliver, convey, surrender or transfer the property or records to the insolvency manager.

(2) Where –

- (a) the insolvency manager seizes or disposes of property which is not property of the limited liability partnership; and
- (b) at the time of seizure or disposal the insolvency manager believes, and has reasonable grounds for believing, that the insolvency manager is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the insolvency manager shall not be liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the insolvency manager, and shall have a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.

**40 Duty to co-operate with insolvency manager**

(1) In an insolvent winding up, each of the persons mentioned in paragraph (2) shall –

- (a) give the insolvency manager information concerning the limited liability partnership and its establishment, business, dealings, affairs, or property which the insolvency manager may at any time after the commencement of the insolvent winding up reasonably require; and
- (b) attend on the insolvency manager at reasonable times and on reasonable notice when requested to do so.

(2) The persons referred to in paragraph (1) are –

- (a) those who are, or have at any time been, partners in the limited liability partnership or have at any time held themselves out to be partners in the limited liability partnership;
- (b) any person who is or has been a secretary of the limited liability partnership;



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- (c) those who are in the employment of the limited liability partnership, or have been in its employment within one year before the commencement of the insolvent winding up, and are, in the opinion of the insolvency manager, capable of giving information which the insolvency manager requires; and
  - (d) those who are, or have within that year been, partners in or in the employment of another partnership with separate legal personality which is or was a partner in the limited liability partnership in question or officers of, or in the employment of, any person who is or was a partner in the limited liability partnership in question.
- (3) For the purposes of paragraph (2), “employment” includes employment under a contract for services (*contrat de louage d’ouvrage*).
- (4) A person who fails to comply with paragraph (1) shall be guilty of an offence.

#### **41 Insolvency manager to report criminal offences**

- (1) If it appears to the insolvency manager that any person has been guilty of an act or omission in relation to the limited liability partnership for which that person is criminally liable, the insolvency manager shall –
- (a) forthwith report the matter to the Attorney General; and
  - (b) furnish the Attorney General with information and give the Attorney General access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession of or under the control of the insolvency manager and relating to the matter in question) as the Attorney General requires.
- (2) Where a report is made to the Attorney General under paragraph (1), the Attorney General may refer the matter to the Chief Minister or the Commission for further enquiry; and the Chief Minister or the Commission, as the case may be –
- (a) shall thereupon investigate the matter; and
  - (b) may also, if they think it necessary for the purposes of their investigation, investigate the affairs of –
    - (i) any person mentioned in Regulation 40(2),
    - (ii) any company or partnership of which the limited liability partnership is or was a member, or
    - (iii) any director or employee of such a company, or any employee or partner of such a partnership,
- and shall report upon the affairs of the partner, company, director or employee so far as they think that the results of their investigation of that person’s affairs are relevant to the investigation of the affairs of the limited liability partnership.
- (3) The Chief Minister or the Commission may appoint one or more inspectors to carry out an investigation and report to him or her for the purposes of paragraph (2).
- (4) If it appears to the Court in the course of an insolvent winding up that any person has been guilty as mentioned in paragraph (1), and that no report

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with respect to the matter has been made by the insolvency manager to the Attorney General under that paragraph, the Court may (on the application of a person interested in the insolvent winding up or of its own motion) direct the insolvency manager to make such a report; and on a report being made accordingly this Regulation shall have effect as though the report had been made in pursuance of paragraph (1).

#### **42 Obligations and powers arising under Regulation 41**

- (1) If the Chief Minister, the Commission or an inspector appointed by either of them to carry out an investigation considers that any person is or may be in possession of information relating to a matter which they believe to be relevant to an investigation pursuant to Regulation 41(2), the Chief Minister, the Commission or inspector may require the person –
  - (a) to produce and make available to them all records in the person's custody or power relating to that matter;
  - (b) at reasonable times and on reasonable notice, to attend before them; and
  - (c) otherwise to give them all assistance in connection with the investigation which the person is reasonably able to give,and it is that person's duty to comply with the requirement.
- (2) The Chief Minister, the Commission or an inspector appointed by either of them to carry out an investigation may, for the purposes of the examination, examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.
- (3) An answer given by a person to a question put to the person in exercise of the powers conferred by paragraph (1) may not be used by the prosecution in evidence against the person in any criminal proceedings except for the purposes of proceedings under paragraph (7) or Regulation 44.
- (4) This paragraph applies where the Chief Minister, the Commission or an inspector appointed by either of them to carry out an investigation has reasonable grounds for believing that any employee, former employee, partner or former partner in, or director or former director of, the person whose affairs are being investigated maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Jersey or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that employee, former employee, partner, former partner, director or former director, towards the person or its remaining partners or its members, as the case may be.
- (5) In a case where paragraph (4) applies, the Chief Minister, the Commission or the inspector may require the employee, former employee, partner, former partner, director or former director, as the case may be, or any of them, to produce and make available to the Chief Minister, the Commission or inspector, as the case may be, all records in the possession or control of the employee, former employee partner,

former partner, director or former director, as the case may, be relating to that bank account.

- (6) Where criminal proceedings are instituted by the Attorney General following a report or reference under Regulation 41 the insolvency manager and every partner, agent and employee of the limited liability partnership past and present (other than the defendant) shall give the Attorney General any assistance in connection with the prosecution which they are reasonably able to give; and for this purpose “agent” includes a banker, advocate or solicitor of the limited liability partnership and a person employed by the limited liability partnership as auditor.
- (7) If a person fails or neglects to give assistance as required by paragraph (6), the Court may, on the application of the Attorney General, direct the person to comply with that paragraph; and if the application is made with respect to an insolvency manager, the Court may (unless it appears that the failure or neglect to comply was due to the insolvency manager not having in his or her hands sufficient assets of the limited liability partnership to enable him or her to do so) direct that the costs shall be borne by the insolvency manager personally.
- (8) A person who knowingly or recklessly makes to the Chief Minister, the Commission or an inspector appointed by either of them any statement, whether written or oral, which conveys, or purports to convey, any information or explanation which the Chief Minister, the Commission or inspector requires, or is entitled to require, in the course of an investigation and is misleading, false or deceptive in a material particular, shall be guilty of an offence.

#### **43 Authority for search**

- (1) An inspector appointed under Regulation 41(3) may for the purpose of the investigation apply to the Bailiff for a warrant under this Regulation in relation to specified premises.
- (2) If the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled the Bailiff may issue a warrant authorizing a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.
- (3) The conditions referred to in paragraph (2) are –
  - (a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
  - (b) that the investigation for the purposes of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.
- (4) Where a person has entered premises in the execution of a warrant issued under this Regulation, the person may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of

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substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

- (5) In this Regulation, “premises” includes any place and, in particular, includes –
- (a) any vehicle, vessel, aircraft or hovercraft;
  - (b) any offshore installation; and
  - (c) any tent or movable structure.
- (6) Any person who wilfully obstructs any person acting in the execution of a warrant issued under this Regulation shall be guilty of an offence.

#### **44 Failure to co-operate with Chief Minister, Commission or inspector**

- (1) If any person –
- (a) fails to comply with a requirement under Regulation 42; or
  - (b) refuses to answer any question put to the person by the inspectors for the purpose of the investigation,
- the Chief Minister, the Commission or the inspector may certify the refusal in writing to the Court.
- (2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if the offender had been guilty of contempt of the Court.

#### **45 Inspector’s report to be evidence**

- (1) A copy of a report of an inspector is admissible in legal proceedings as evidence of the opinion of the inspector in relation to a matter contained in the report if the copy has been certified to be a true copy by whichever of the Chief Minister or the Commission appointed the inspector.
- (2) A document purporting to be a certificate mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

#### **46 Privileged information**

Nothing in this Part requires the disclosure or production to the Chief Minister or the Commission or to an inspector appointed by either of them –

- (a) by a person of information or records which the person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if the person is a lawyer, the name and address of the person’s client;
- (b) by a limited liability partnership’s bankers (as such) of information or records relating to the affairs of any of their customers other than the limited liability partnership or other person under investigation.

**47 Enforcement of duty of partner or insolvency manager to make returns etc.**

- (1) If, in an insolvent winding up, a partner or the insolvency manager who has defaulted in delivering a document or in giving any notice which the partner or insolvency manager is by law required to deliver or give, fails to make good the default within 14 days after the service on the partner or insolvency manager of a notice requiring the partner or insolvency manager to do so, the Court may, on an application made by a creditor or a partner, or by the registrar, make an order directing the partner or the insolvency manager to make good the default within the time specified in the order.
- (2) The Court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the partner or the insolvency manager personally.
- (3) Nothing in paragraph (1) prejudices the operation of any enactment imposing penalties on a partner or an insolvency manager in respect of a default mentioned therein.

**48 Qualifications of insolvency manager**

- (1) A person who is not an individual is not qualified to act as an insolvency manager.
- (2) A person is not qualified to be appointed as an insolvency manager unless the person is a member of –
  - (a) the Institute of Chartered Accountants in England and Wales;
  - (b) the Institute of Chartered Accountants of Scotland;
  - (c) the Association of Chartered Certified Accountants; or
  - (d) the Institute of Chartered Accountants in Ireland.
- (3) None of the following persons is so qualified –
  - (a) a partner, former partner, officer, former officer, employee or former employee of the limited liability partnership;
  - (b) any partner in a partnership with separate legal personality which is itself a partner in the limited liability partnership;
  - (c) a secretary or former secretary of the limited liability partnership;
  - (d) any officer, former officer, employee or former employee of a company which is a partner in the limited liability partnership; or
  - (e) where a partner in the limited liability partnership is also a partner in another partnership, any partner in that partnership.
- (4) Notwithstanding paragraph (1), the Viscount, by virtue of the Viscount's office, is a person qualified for appointment as an insolvency manager.
- (5) The Chief Minister may by Order –
  - (a) amend paragraph (2) by adding, deleting or substituting bodies therein, or adding classes of persons;
  - (b) amend paragraph (3) by adding, deleting, substituting or qualifying descriptions of persons therein.

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**49 Corrupt inducement affecting appointment as insolvency manager**

A person who gives or agrees or offers to give a partner in or creditor of an insolvent limited liability partnership any valuable benefit with a view to securing the person's own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the insolvency manager, shall be guilty of an offence.

**50 Notification by insolvency manager of resignation etc.**

- (1) An insolvency manager who resigns, is removed or for any other reason vacates office shall, within 14 days after the resignation, removal or vacation of office, give notice thereof, signed by the insolvency manager, to the registrar and to the creditors.
- (2) An insolvency manager who fails to comply with paragraph (1) shall be guilty of an offence.

**51 Notification of winding up of insolvent limited liability partnership**

- (1) When an insolvent limited liability partnership is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the limited liability partnership or the insolvency manager, being a document on or in which the name of the limited liability partnership appears, shall contain a statement that the limited liability partnership is subject to an insolvent winding up.
- (2) An insolvency manager of an insolvent limited liability partnership who fails to comply with paragraph (1) shall be guilty of an offence.

**52 Bar against other proceedings in bankruptcy**

The winding up of an insolvent limited liability partnership under this Part bars the right to take any other proceedings in bankruptcy against the limited liability partnership except the right of a creditor to apply for a declaration under the Bankruptcy (Désastre) (Jersey) Law 1990.

**53 Disposal of records**

- (1) The Chief Minister may by Order specify the period or periods not exceeding 10 years from the cancellation of registration of the limited liability partnership during which the records of the insolvent limited liability partnership which has been wound up shall not be destroyed.
- (2) When an insolvent limited liability partnership has been wound up, and registration is about to be cancelled, its records and those of the insolvency manager must be retained in the way that the insolvency committee or, if there is no such committee, the creditors of the limited liability partnership may direct.
- (3) After 10 years from the cancellation of registration of the limited liability partnership, no responsibility rests on the limited liability partnership, the insolvency manager or a person to whom the custody of the records has

been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

- (4) A person who acts in contravention of a direction made for the purposes of this Regulation shall be guilty of an offence.

## **PART 5**

### **MISCELLANEOUS AND GENERAL**

#### **54 Recognition of proceedings in other jurisdictions**

- (1) This Regulation applies where an order is made by a court outside Jersey for the dissolution or winding up of the affairs of a limited liability partnership, and references in this Regulation to an order shall be construed accordingly.
- (2) For the purposes of this Law, a limited liability partnership shall not be taken to be dissolved by an order until that order has been recognized by the Court, but, once an order has been recognized by the Court, it shall be taken to be an order for the dissolution and winding up of the affairs of the limited liability partnership.
- (3) An application to the Court for recognition of an order may be made by the person appointed under it to wind up the affairs of the limited liability partnership or, if none, the person on whose application the order was made.
- (4) In determining whether or not to recognize an order the Court shall have regard to whether the grounds on which it is made would constitute grounds for dissolution in Jersey.
- (5) Where the Court decides to recognize an order, it may also appoint a person to be responsible for winding up the affairs of the limited liability partnership and give such directions as it thinks fit as to the winding up.
- (6) Where the Court decides to recognize an order in respect of a limited liability partnership, the limited liability partnership shall deliver a copy of the decision of the Court to the registrar within 28 days after it is made.
- (7) Upon receiving a copy of the decision referred to in paragraph (6), the registrar shall register it and issue a certificate to that effect.
- (8) A limited liability partnership that fails to comply with paragraph (6) shall be guilty of an offence.

#### **55 Penalties**

- (1) The penalty for an offence under Regulation 25(3) or 26(3) shall be a fine not exceeding level 2 on the standard scale.
- (2) The penalty for an offence committed under Regulation 5(3), 5(5), 6(4), 7(4), 9(8), 12(2), 14(8), 17(8), 21(4), 27(4), 28(3), 29(5), 53(4) or 54(8) shall be liable to a fine not exceeding level 4 on the standard scale.

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- (3) The penalty for an offence under Regulation 15(6), 50(2) or 51(2) shall be a fine.
  - (4) The penalty for an offence under Regulation 40(4) shall be 6 months imprisonment and a fine.
  - (5) The penalty for an offence under Regulation 42(8), 43(6) or 49 shall be 2 years imprisonment and a fine.

#### **56 Consequential amendment**

In Regulation 23(4) of the Money Laundering (Jersey) Order 2008 for sub-paragraph (j) there shall be substituted the following sub-paragraph –

“(j) an inspector appointed by the Chief Minister under Regulation 42(3) of the Limited Liability Partnership (Jersey) Law 201-;”.

#### **57 Citation and commencement**

These Regulations may be cited as the Limited Liability Partnerships (Dissolution and Winding Up, etc.) (Jersey) Regulations 201- and shall come into force on the same day as the Law.