

STATES OF JERSEY



DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT) (JERSEY) LAW 202- (P.35/2020): COMMENTS

**Presented to the States on 7th May 2020
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

[P.35/2020](#) – “Draft Limited Liability Companies (Amendment) (Jersey) Law 202-” (the “draft Law”) was lodged on 30th March by the Minister for External Relations. The draft Law would amend the [Limited Liability Companies \(Jersey\) Law 2018](#) (the “LLC Law”) which was approved by the States Assembly on 11th September 2018. At that time, the debate on the LLC Law was informed by a [Comments](#) paper presented by the Panel.

The purpose of the LLC Law is to provide for the establishment of limited liability companies (“LLC”) in Jersey. LLCs are most commonly associated with the United States and, during a previous briefing session, Government Officials explained that LLCs combine the limited liability protection of a company with the constitutional flexibility and privacy of a partnership.

Although the LLC Law was approved by the States Assembly in September 2018, it has not yet been implemented and is due to be brought into force by an Appointed Day Act. Government Officials explained that a delayed implementation period was always the intention because the LLC Law provides a legislative basis so that Regulations can be developed. It is anticipated that Regulations will be drafted once consideration has been given to any references in existing Laws to the term “company” and whether it should be applicable to LLCs.

The Minister for External Relations and the Financial Services and Digital Economy Department has kept the Panel informed of any subsequent legislation relating to the LLC Law, and a briefing on the draft Law was provided by Government Officials on 9th March 2020, before it was lodged.

Purpose of the draft Law

The purpose of the draft Law is to clarify certain existing provisions of the LLC Law, and it aims to ensure that the Jersey LLC is an attractive and familiar product to the target market. The draft Law was informed by a Government consultation with the Jersey Finance LLC Working Group and the Jersey Financial Services Commission. The purpose of this consultation was to consider whether any amendments to the LLC Law were necessary.

When the Panel met Government Officials on 9th March, it was advised that the majority of amendments were “tidying-up” changes: for example, adding commas and deleting stray words. However, there are a number of significant changes being proposed which are explained in detail in the draft Law.

The briefing with Government Officials focussed mainly on Article 15, which deletes Article 46 of the LLC Law, which refers to Jersey’s customary law. The Panel was advised that the reason for removing this Article was that it was confusing and unfamiliar to the target market for LLCs. The LLC Law, once implemented, would introduce a United States-familiar vehicle which would contribute to Jersey being an attractive jurisdiction for American business. No codification of customary law of partnerships existed in the United States and, therefore, the Article would have been confusing to the American finance industry.

The Panel advised, in its previous Comments on the LLC Law, that it may undertake a future review on the reputational impact of the Law, and how effective it had been in attracting American (and equivalent European) business to Jersey. The timing of the review is dependent on when the LLC Law is implemented.

The Panel notes that a number of other changes are proposed to the LLC Law, which for ease of reference, are summarised below –

- Article 4 – clarifies that if a member or manager of an LLC becomes aware during the existence of the LLC that information contained in the declaration to register the LLC was false or inaccurate, then the LLC must deliver an amendment statement to the registrar to correct the information.
- Article 5 – removes the requirement to prescribe the form for making an application to reserve the name of an LLC, and instead requires that the application be made in a form approved by the registrar.
- Article 6 – requires an LLC to keep at its registered office a document containing a list of the name and address of each deputy secretary and secretary of the limited liability company, in addition to the name and address of each member and manager. The draft Law also makes it clear that notice of a trust must not be entered on that list and, subject to an LLC agreement, the details of an assignee of an LLC interest are not required to be entered.
- Article 16 – duties of the manager of an LLC are amended to bring the provision into line with LLC legislation in other jurisdictions. The Article also includes a provision to ratify a breach of a duty by a manager where members unanimously agree, and where the LLC remains able to discharge its liability after the breach.
- Article 18 – addresses the situation where an offence committed by the LLC is demonstrated to have been committed with the consent or connivance of a manager, or is attributable to the negligence of a manager of the LLC.

The Panel contacted the Chief Executive Officer of Jersey Finance for his views on the proposed changes. The CEO said –

Chief Executive Officer, Jersey Finance:

“I have spoken to Jersey Finance colleagues more closely engaged with the drafting, and they confirm these amendments mainly reflect industry comments on the initial law as adopted, and which we believe will make the law more user-friendly in practice, more recognisable, particularly in a US-focussed marketplace, and will facilitate the implementation of LLCs.”

Conclusion

In conclusion, the Panel supports the adoption of this draft Law. The changes are largely technical, and the Panel is satisfied that the more significant changes have been based on consultation with the finance industry.