

# STATES OF JERSEY



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

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Lodged au Greffe on 21st May 2018  
by the Chief Minister

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STATES GREFFE





Jersey

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

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Limited Liability Companies (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

*Chief Minister*

Dated: 23rd April 2018

## REPORT

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The Draft Limited Liability Companies (Jersey) Law 201- (the “**draft Law**”) provides for the establishment of limited liability companies (“**LLCs**”) in Jersey, which are legal entities prevalent in the US (historically based on European equivalents) that share features with both companies and partnerships. For example, they have some of the benefits that are offered by companies, including separate legal personality and a form of limited liability; and, in much the same way as partnerships, they are governed by the terms of their LLC agreements. We would suggest the closest jurisdictional equivalent would be the limited liability partnership.

The appeal of the US LLC is largely due to its flexibility, with it being used for a variety of purposes, from simple businesses undertaken by one or more persons, to being used as the ultimate holding vehicle of Fortune 500 companies. It is also popular as a special purpose vehicle in finance and fund structures. Since its introduction, the Isle of Man, Bermuda and the Cayman Islands have also introduced versions of the LLC into their domestic legislation, with reports suggesting that the latter (both introduced in 2016) are proving popular in financial and investment transactions.

It is envisaged that the introduction of a US-familiar vehicle would contribute to Jersey being an increasingly attractive jurisdiction for US (and equivalent European) business, as well as catering to our growing US market generally (North American assets and funds administered in Jersey in 2016 totalled approximately £169 billion). The addition of LLCs to Jersey (which would innovatively combine various features of Jersey limited companies and statutory partnerships) would also provide a new corporate tool for the finance industry, an objective consistent with the general principles of the Government’s published Jersey Financial Services Policy Framework.

In preparing the draft Law, specific regard has been had to LLC laws in other jurisdictions and the features of existing Jersey entities, with a view to ensuring that Jersey LLCs would fit within our existing statutory and regulatory frameworks, and in order to be consistent with our status as a leading and regulatory compliant international finance centre. Responses to the consultation that was published (and the final form of the draft Law) were considered and (where applicable) incorporated on the same basis.

If the draft Law is adopted by the States, it is proposed that draft Regulations are prepared to address ancillary elements, and that a further draft Law to enact both the draft Law and the draft Regulations will be submitted in due course.

A public consultation paper was issued by the Government on 20th November 2017, which invited comments by 12th January 2018 on a draft of the Limited Liability Companies (Jersey) Law 201-. The comments received to the consultation were largely positive, and a response to the consultation was issued in April 2018, summarising the response to the consultation in full. The draft Law was updated to reflect the comments received.

### **Collective responsibility under Standing Order 21(3A)**

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

**Financial and manpower implications**

There are no additional financial or manpower implications for the States arising from the approval of the draft Law.

**Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Notes on the Draft Limited Liability Companies (Jersey) Law 201-

#### Article 1, Protocol 1 ECHR (“A1,P1”)

1. Article 1, Protocol 1 of the ECHR provides that –  
*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*  
*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*
2. **A1,P1** is engaged by the draft Law to the extent that there are some slight interferences with the freedom to peacefully enjoy possessions.
3. For example, under Article 37 of the draft Law, a member may be liable to return a distribution or purported release from an obligation to the limited liability company if, at the time when and immediately after payment is made, the limited liability company is insolvent, i.e. unable to pay its debts as they fall due or in the case of fraud. Also, under Article 38, a member’s freedom to assign, transfer, or otherwise dispose of his or her interest is fettered by the terms of the limited liability company agreement.
4. **A1,P1** is a qualified right and as such there may be limitations on the right to the extent that there is a legitimate aim, the limitation is prescribed in law and the measures used are proportionate.
5. Taking first the question of whether there is a legitimate aim, **A1,P1** permits a control of use in accordance with the general interest. The “general interest” may, and has been, interpreted widely to encompass many aims. The purposes of the limitations referred to above, i.e. to protect the interests of members and creditors, are legitimate purposes which justify the limitations.
6. The interferences are clearly prescribed in the draft Law and therefore that limb of the test is satisfied.
7. The final point to consider is proportionality. The limitations in the draft Law are standard provisions which do not present any difficulties. They are reasonable and proportionate to the aims which they purport to secure, and therefore the draft Law can be said to be compatible with Article 1, Protocol 1, ECHR.

## Explanatory Note

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This Law provides for the establishment and regulation of limited liability companies (as defined in *Article 1*).

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

*Part 2* comprises *Articles 2 to 12* which set out the essential elements of a limited liability company.

*Article 2* provides that a limited liability company may be formed for any lawful business, purpose or activity, whether or not for profit. A limited liability company has legal personality that is separate from that of its members but is not a body corporate. A limited liability company shall be dissolved and have its affairs wound up only pursuant to the LLC agreement (as defined in *Article 1*) or by this Law or another enactment. A limited liability company has unlimited capacity and possesses and may exercise all powers and privileges granted by the LLC agreement, this Law or other enactment together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

Under *Article 2*, a limited liability company must consist of one or more persons who are members and if appointed, one or more persons who are managers. A person may be a member and a manager at the same time in the limited liability company. Subject to the LLC agreement, a limited liability company may indemnify any member, manager or other person from and against any and all claims and demands.

Under *Article 3*, an LLC agreement must be entered into (if not already existing) before, after or at the time of delivery of a declaration to the Registrar and may be made effective as of the date of the certificate of formation or such other date as specified in the LLC agreement. A limited liability company is not required to execute its LLC agreement and is bound by its terms whether or not it executes it. Each member and manager (if any) of a limited liability company is bound by the LLC agreement (which shall be enforceable) whether or not the member or manager executes the LLC agreement. An LLC agreement may provide rights to a third party and the manner in which such rights may be varied or extinguished (which if, the LLC agreement does not provide otherwise, is only with the consent of such third party) and such third party shall be entitled to enforce such rights notwithstanding that they are not a party to the LLC agreement. If an LLC agreement provides for the manner in which it may be amended, it may be amended only in that manner or as otherwise permitted by this Law and if the LLC agreement is silent as to the manner of amendment it may be amended with the unanimous approval of all members or as otherwise permitted by Law. *Article 3* also makes provision for remedies, sanctions and consequences for breach of an LLC agreement.

*Article 4* provides for the registration of a limited liability company and for a certificate of formation to be issued on registration. The registration of a limited liability company and thereby its formation has effect from the date of issue of its certificate of formation and ceases to have effect upon the cancellation of registration of the limited liability company in accordance with *Article 6*.

*Article 5* makes provision for amendments of a declaration so that if during the existence of a limited liability company, a manager, or if there is no manager, any member becomes aware that any statement in a declaration was false when, or that any change (other than a change in the registered office of limited liability company) is

made or occurs in respect of any of the particulars of the declaration delivered to the registrar, an amendment statement signed by an authorized person specifying the nature of the change shall, within 21 days of such a manager or member, as the case may be, becoming aware of the false statement or of the date of the change be delivered to the registrar. Upon delivery of an amendment statement if the registrar is satisfied that the change complies with the requirements of this Law, the registrar shall register the amendment statement and issue to the limited liability company an amended certificate of formation giving effect to the change and in accordance with *Article 48(3)* the certificate of formation shall be signed by the registrar and sealed with the registrar's seal (if any). A limited liability company that fails to deliver an amendment statement specifying the change would be guilty of an offence.

*Article 6* makes provision for the cancellation of registration of a limited liability company.

*Article 7* provides for the registered name of a limited liability company to end with the words "Limited Liability Company" in full or any of the abbreviations "LLC" or "L.L.C." and for a limited liability company to use such words and abbreviations interchangeably when providing its name in the ordinary course of business where convenient provided that such use is not misleading.

*Article 7* also makes provision for the reservation of the name of a limited liability company and for a change of name of a limited liability company. A change of name of a limited liability company would not affect any rights or liabilities of the limited liability company 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. A limited liability company must 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 company its name, any number or other identifying code assigned to it by the registrar and the words "registered as a limited liability company in Jersey".

*Article 8* requires that a limited liability company must have a registered office in Jersey at which certain records relating to the limited liability company and its members and managers must be kept.

*Article 9* makes it mandatory for a limited liability company to appoint a secretary and gives the limited liability company the discretion to appoint a deputy secretary.

*Article 10* makes provision for the accounting records and returns of a limited liability company to be kept by the secretary for 10 years at a place in Jersey all the accounting records that are provided to the secretary by the limited liability company.

*Article 11* provides for the service of a document on a limited liability company to be effected by sending it by post or delivering it to the registered office of the limited liability company.

*Article 12* allows for the establishment of one or more designated series consisting of members, managers, LLC interests or assets, each of which shall have a legal personality separate from that of its members, the limited liability company and any other series thereof but shall not be a body corporate. Each series may also have separate rights, powers or duties with respect to specified property or liabilities of the limited liability company, or profits and losses associated with specified property or liabilities, and any such series may have a separate business purpose or investment objective.



*Part 3* comprises *Articles 13 to 20* which deal with matters relating to members.

*Article 13* provides for the admission of members and LLC interests.

*Article 14* permits an LLC agreement to provide for classes or groups of members having such relative rights, powers and duties as the LLC agreement may provide, and to make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members.

*Article 15* permits an LLC agreement to set provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

*Article 16* provides that an LLC agreement may provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or class of LLC interest or group of members. An LLC agreement may also provide any member or class or group of members shall have no voting rights and may grant to all or certain identified members or a specified class of LLC interest or group of members the right to vote separately or with all or any class of LLC interest or group of members or managers, on any matter and voting by members may be on a per capita, number, financial interest, class, group or any other basis. Subject to an LLC agreement or except as otherwise provided in this Law, any vote (or consent) of members shall be passed (or given) if passed (or given) by members who together hold a majority of the total rights to profits of the limited liability company, but where that results in no members with a right to vote or provide consent, the members may vote or consent by a simple majority.

*Article 16* also provides that subject to an LLC agreement –

- (a) any matter that is to be voted on, consented to or approved by members may be dealt with without a meeting, without prior notice and without a vote by consent in writing, signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted;
- (b) if a person (whether or not then a member), consenting as a member to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), such a person shall be deemed to have consented as a member at such future time so long as such a person is then a member;
- (c) on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing or by means of electronic communication; and
- (d) a consent transmitted by electronic communication by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of *Article 14*.

*Article 17* makes provision for a member to be treated as having resigned as a member of a limited liability company immediately in certain circumstances, including upon the member making an assignment for the benefit of creditors or if the member is insolvent or becomes bankrupt.

*Article 18* makes provision for the debts and other liabilities of a limited liability company, whether arising in contract, under customary law or otherwise, to be solely the debts and other liabilities of the limited liability company, and neither a member nor manager of a limited liability company is would be liable personally for any such debts or other liabilities of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company. A member or manager may, in accordance with the LLC agreement or otherwise, agree to be liable personally for any or all of the debts and other liabilities of the limited liability company.

Under *Article 19*, subject to the LLC agreement, each member is given the authority to bind the limited liability company if no manager has been appointed or holds office.

*Article 18* permits a member to resign from and cease to be a member of a limited liability company only at the time or upon the happening of events specified in an LLC agreement and in accordance with the LLC agreement, as otherwise provided in this Law or with the consent of all of the other members.

*Part 4* comprises *Articles 21 to 28* which make provision for matters relating to managers.

*Article 21* provides for the management of a limited liability company so that an LLC agreement may provide for the management of a limited liability company by a manager and provide for the appointment of a person as a manager of a limited liability company. A limited liability company may have more than one manager and, subject to the LLC agreement, each manager the authority to bind the limited liability company.

*Article 22* entitles a manager to may make contributions to the limited liability company and to share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, subject to the LLC agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

Under *Article 23*, an LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers.

*Article 24* makes provision for the procedures for meetings of managers.

*Article 25* provides for the taking of an action, without the vote or approval of any manager or class or group of managers and for the right of managers to vote on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis. Subject to the LLC agreement, any matter to be decided by a vote of the managers or class or group of managers, is decided on a simple majority of votes.

*Article 26* makes provision for a member or manager to be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidator, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the

member, manager reasonably believes are within such other person's professional or expert competence.

*Article 27* gives a member or manager the power to delegate his or her rights and powers to manage and control the business and affairs of the limited liability company.

*Article 28* provides for the resignation of a manager of a limited liability company at the time or upon the happening of events specified in the LLC agreement and in accordance with the LLC agreement. An LLC agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that an LLC agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager contravenes the LLC agreement, in addition to any remedies otherwise available under any other enactment, a limited liability company may recover from the resigning manager damages for breach of the LLC agreement and offset the damages against the amount otherwise distributable to the resigning manager.

*Part 5* comprises *Articles 29 to 32* which make provisions for financial matters.

*Article 29* provides that the contribution of a member to a limited liability company may be in the form of cash, property or services rendered, or a promissory note, an undertaking or other obligation to contribute cash or property or to perform services.

Under *Article 30*, subject to the LLC agreement, a member is liable to the limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason.

*Article 31* provides for the profits and losses of a limited liability company among the members and among classes or groups of members.

*Article 32* provides for the allocation of distributions of cash or other assets of a limited liability company among the members and among classes or groups of members.

*Part 6* comprises *Articles 33 to 37* which provide for distributions and assignments by a limited liability company.

*Article 33* allows for the LLC agreement to provide for payment of distributions in such manner, time and form, including distributions in cash and in kind and for the establishment of a record date with respect to distributions by a limited liability company.

*Article 34* entitles a member upon resignation to receive any distribution to which such member is entitled pursuant to the LLC agreement and, subject to the LLC agreement, the member is entitled to receive, within a reasonable time after resignation, the fair value of such member's LLC interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

Under *Article 35*, subject to the LLC agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Subject to the LLC agreement a member may only be compelled to accept its allocated percentage of a distribution of any asset in kind from a limited liability company to its members if that percentage is

equal to the percentage in which the member shares in distributions from the limited liability company.

*Article 36* provides for a member to have the status of, be entitled to, all remedies available to a creditor of a limited liability company with respect to the distribution at the time a member becomes entitled to receive a distribution, subject to *Article 37*, the Regulations made under *Article 58* and the LLC agreement.

*Article 37* imposes a limitation on a distribution so that a limited liability company is prohibited from making a distribution to a member if, at the time when and immediately after payment is made, the limited liability company is insolvent.

*Part 7* comprises *Articles 38 to 45* which make provision for the assignment of LLC interest.

*Article 38* provides for the LLC interest to be assignable in whole or in part, subject to the LLC agreement. An LLC agreement may provide that an LLC interest may not be assigned prior to the dissolution and winding up of the limited liability company.

Under *Article 39*, the assignee of an LLC interest not admitted as a member has no right to participate in the management of the business and affairs of a limited liability company, subject to the LLC agreement, upon the vote or consent of all of the members of the limited liability company.

*Article 40* provides that subject to the LLC agreement an assignment of an limited LLC interest does not entitle the assignee (being a person not yet admitted as a member) to become or to exercise any rights or powers of a member but an assignment of an LLC interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned.

Under *Article 41*, subject to this Law, the LLC agreement and except to the extent assumed by agreement, until an assignee of an LLC interest becomes a member, the assignee has no liability as a member solely as a result of the assignment.

*Article 42* provides (subject to the LLC agreement) for the ceasing of rights or powers of member upon a person to whom the member has assigned all of the member's LLC interest becoming a member but provides that the granting of a security interest, lien or other encumbrance in or against, any or all of the LLC interest of a member would not in itself cause the member to cease to be a member or to have the power to exercise any rights or powers of a member. Whether or not an assignee becomes a member, the assignor is not released from liability to the limited liability company under *Articles 30(1) and 37(3)*.

*Article 43* gives an assignee the right to become a member in respect of the assigned LLC interest if permitted in the LLC agreement and in accordance with the terms of the LLC agreement or, if the LLC agreement is silent on such matters, with the approval of all of the members of the limited liability company.

*Article 44* makes provision for the rights, powers and liabilities of assignee upon becoming a member to be in accordance with the terms of the LLC agreement, this Law and any other enactment.

*Article 45* provides for the acquisition by the limited liability company of any LLC interest or other interest of member or manager by purchase, redemption or otherwise, if immediately following the acquisition, the LLC would not be insolvent. A limited liability company may not become a member of itself and any such interest so acquired by the limited liability company would be deemed cancelled. The right of acquisition is subject to the LLC agreement.

*Part 8* comprises *Articles 46 to 63* which are miscellaneous provisions.

*Article 46* provides for the rules of customary law applicable to partnerships to apply to limited liability companies except in so far as they are inconsistent with the express provisions of this Law or the nature of a limited liability company.

*Article 47* provides that subject to this Law, the rights and duties of the members in a limited liability company shall, as between themselves be determined by the LLC agreement.

*Article 48* confirms that the registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991 is the registrar of limited liability companies. *Article 48(2)* requires the registrar to maintain a register of limited liability companies 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. Any certificate issued by the registrar under this Law must be signed by the registrar and sealed with the registrar's seal (if any) and *Article 48(4)* 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 companies. 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. The registrar has 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 company or is inaccurate, or is derived from something that is inaccurate or forged. Before exercising power to remove material from the register, 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.

*Article 49* gives the Commission the power to require the payment to it by a limited liability company of an annual administration fee. The annual administration 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. The States is also empowered by Regulations to provide that, in addition to the annual administration fee, a limited liability company must pay to the Commission annually such amount as the Minister may by Order specify.

By *Article 50*, the Commission may require the payment to it of fees in respect of the performance by the registrar of his or her functions under this Law or a charge for the provision by the registrar of any service, advice, or assistance, or a document or information. 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. The Commission is also given the power to require other fees in respect of the performance of the registrar's functions under this Law.

Where a fee is payable in respect of the performance of a function by the registrar, the registrar does not need take any action until the fee is paid. Where the fee is payable on the receipt by the registrar of a document required to be delivered to the registrar, the registrar would be taken not to have received the document until the fee is paid. 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 delivered or authenticated.

*Article 51* makes provision for the form and manner in which documents are to be delivered to registrar.

*Article 52* provides for the inspection and production of documents kept by registrar.

*Article 53* provides for the destruction by the registrar of records of a limited liability company that has been dissolved, at any time after 10 years from the date of the dissolution. After 10 years from the dissolution of a limited liability company no responsibility rests on a member, manager or a 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.

*Article 54* makes provision for the form in which records that a limited liability company is required by this Law to keep may be kept. A limited liability company is required to take reasonable precautions to prevent loss or destruction of, to prevent falsification of entries in; and to facilitate detection and correction of inaccuracies in, the records required to be kept and a limited liability company that fails to comply with any the requirements is guilty of an offence and liable to a fine of level 4 on the standard scale. *Article 54* also imposes obligations on the manager of a limited liability company and a secretary in respect of the keeping of records of the limited liability company.

*Article 55* requires the Judicial Greffier to register in the Public Registry all Acts of Court and orders affecting immovable property made under this Law.

*Article 56* creates an offence for giving false or misleading information.

*Article 57* makes provision for the criminal liability of partners, directors and other officers of partnerships with separate legal personality and bodies corporate.

*Article 58* provides for the limitation of liability of the States; the Minister or any person who is, or is acting as, an officer, employee or agent in an administration of the States for which the Minister is assigned responsibility; the Commission, any Commissioner or any person who is, or is acting as, an officer, employee or agent of the Commission; and the registrar, the deputy registrar, an assistant registrar or any person who is, or is acting as, an officer, employee or agent of the registrar. The limitation of liability does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of *Article 7(1)* of the Human Rights (Jersey) Law 2000.

*Article 59* provides general penalties for certain offences under the Law.

*Article 60* gives the States the power by Regulations to make such provision as the States thinks fit for the purposes of carrying this Law into effect. The Regulations may provide for various matters including the creation of offences, mergers and demergers of limited liability companies and the winding up and dissolution of solvent and insolvent limited liability companies or a series established under *Article 10*.

*Article 61* gives the Chief Minister the power by Order make provision prescribing any matter that is to be prescribed under this Law. An Order may contain such incidental provisions as the Minister may consider to be necessary or expedient and the Minister must consult the Commission before making any Order.

*Article 62* 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 63* provides for this Law to be cited as the Limited Liability Companies (Jersey) Law 201- and provides for it to come into force on such day or days as the States may by Act appoint.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £200, level 2 is £1000 and level 3 is £10,000.



Jersey

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

### Arrangement

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Jersey

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

A **LAW** to provide for the establishment and regulation of limited liability companies, and for connected purposes.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

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

### PART 1

#### PRELIMINARY

##### 1 Interpretation

(1) In this Law unless the context otherwise requires –

“amendment statement” shall be construed in accordance with Article 5(1);

“authorized person” means a person who is authorized in writing by –

- (a) every person who is a member of the limited liability company; or
- (b) in the case of actions taken prior to the registration of the limited liability company, every person who is intended to be a member of the limited liability company upon such registration;

“certificate of formation” means the certificate of formation issued under Article 4(5);

“Commission” means the Jersey Financial Services Commission established under Article 2(1) of the Financial Services Commission (Jersey) Law 1998<sup>1</sup>;

“contribution” means any cash, property, other assets, services rendered or other obligation to contribute cash, property, other assets or to perform services, which a person contributes to a limited liability company in the

person's capacity as a member, but does not include any monies lent or agreed to be lent to a limited liability company;

"Court" means the Royal Court;

"declaration" shall be construed in accordance with Article 4(1) and includes any amendment statement delivered under Article 5 made to the declaration under Article 5;

"distribution" shall be construed in accordance with Article 32;

"electronic communication" has the meaning given by Article 1(1) of the Electronic Communications (Jersey) Law 2000<sup>2</sup>;

"insolvent" means unable to pay debts as they fall due;

"limited liability company" shall be construed in accordance with Article 2;

"LLC agreement", means any agreement, written, oral or implied, of the member or members (or the proposed member or members) as to the affairs of a limited liability company and the conduct of its business and includes any amendments or additions made to the LLC agreement;

"LLC interest" means a member's share of the profits and losses of a limited liability company, a member's right to receive distributions of the limited liability company's assets, and any other rights, benefits and obligations conferred upon a member by the LLC agreement or this Law;

"Minister" means the Chief Minister;

"manager" means a person appointed as such under Article 21;

"member" means a person who is admitted as a member of a limited liability company under Article 13;

"prescribed" means prescribed in an Order made by the Minister;

"register" means the register to be maintained under Article 48(2);

"registrar" shall be construed in accordance with Article 48(1);

"registered office" shall be construed in accordance with Article 8;

"secretary" means the secretary appointed in accordance with Article 9, and any reference to a secretary includes a person carrying out any of the functions of the secretary;

"series" shall be construed in accordance with Article 12.

- (2) The Minister may by Order amend this Article.

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**PART 2****FORMATION, REGISTRATION ETC. OF LIMITED LIABILITY COMPANY****2 Limited liability company**

- (1) Subject to the provisions of this Law, a limited liability company may be formed for any lawful business, purpose or activity, whether or not for profit.
- (2) A limited liability company has legal personality that is separate from that of its members but is not a body corporate.
- (3) A limited liability company shall be dissolved and have its affairs wound up only pursuant to the LLC agreement, or by this Law or another enactment.
- (4) A limited liability company has unlimited capacity and shall possess and may exercise all powers and privileges granted by the LLC agreement, this Law or other enactment together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.
- (5) A limited liability company shall consist of –
  - (a) one or more persons who are members; and
  - (b) if appointed, one or more persons who are managers.
- (6) A person may be a member and a manager at the same time in the limited liability company.
- (7) Subject to the LLC agreement, a member or manager may –
  - (a) lend money to;
  - (b) borrow money from;
  - (c) act as surety, grantor or endorser for; or
  - (d) guarantee or assume one or more obligations of, provide collateral for, and transact other business with,a limited liability company and, subject to any other enactment, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.
- (8) Subject to the LLC agreement, a limited liability company may indemnify any member, manager or other person from and against all claims and demands.

**3 LLC agreement generally**

- (1) An LLC agreement shall be entered into (if not already existing) before, after or at the time of delivery of a declaration to the Registrar, and may be made effective as of the date of the certificate of formation or at such other date as specified in the LLC agreement.

- (2) Notwithstanding anything in the LLC agreement to the contrary, a limited liability company registered and formed under this Law shall be governed by the law of Jersey.
- (3) A limited liability company is not required to execute its LLC agreement and is bound by its terms whether or not it executes it.
- (4) Each member and manager (if any) of a limited liability company is bound by the LLC agreement (which shall be enforceable) whether or not the member or manager executes the LLC agreement.
- (5) An LLC agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the LLC agreement.
- (6) An LLC agreement may provide rights to a third party and the manner in which such rights may be varied or extinguished (which, if the LLC agreement does not provide otherwise, is only with the consent of such third party) and such third party shall be entitled to enforce such rights notwithstanding that they are not a party to the LLC agreement.
- (7) If an LLC agreement provides for the manner in which it may be amended, it may be amended only in that manner or as otherwise permitted by this Law and if the LLC agreement is silent as to the manner of amendment, it may be amended with the unanimous approval of all members or as otherwise permitted by this Law.
- (8) An LLC agreement may provide that a member or a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the LLC agreement shall be subject to remedies, sanctions, penalties or consequences specified in the LLC agreement.
- (9) An LLC agreement may provide that upon the happening of an event specified in the LLC agreement, a member or manager shall be subject to remedies, sanctions, penalties or consequences specified in the LLC agreement.
- (10) Any remedies, sanctions, penalties or consequences referred to in paragraphs (8) and (9) shall not be unenforceable solely on the basis that they are in the nature of a penalty or forfeiture.

#### **4 Registration of limited liability company**

- (1) An application for registration of a limited liability company shall be in the form of a declaration, made and signed by an authorized person and shall be delivered to the registrar by such method or in such form as may be required by the registrar.
- (2) A declaration shall state the following particulars –
  - (a) the proposed name of the limited liability company;
  - (b) the intended address of the registered office of the limited liability company upon registration;
  - (c) the name and address of each person who is to be a member of the limited liability company upon registration;

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- (d) the name and address of each person who is to be a manager of the limited liability company upon registration;
  - (e) the names and addresses of the secretary and deputy secretary (if any) who are to be appointed under Article 9 upon registration;
  - (f) that the person making the declaration is authorized to do so by every person intending to be a member on the date the registration takes effect under paragraph (8); and
  - (g) such other particulars as may be prescribed.
- (3) A declaration shall be accompanied by such documents as may be prescribed.
- (4) The registrar shall maintain a register of all declarations.
- (5) If the registrar is satisfied that –
- (a) an application made under paragraph (1) complies with paragraphs (2) and (3);
  - (b) the proposed name of the limited liability company complies with Article 7;
  - (c) the proposed registered office complies with Article 8; and
  - (d) the proposed secretary and deputy secretary (if any) complies with Article 9,
- the registrar shall register the limited liability company and issue a certificate of formation to the limited liability company.
- (6) The certificate of formation shall specify –
- (a) the date on which the certificate of formation is issued; and
  - (b) any number or other identifying code allocated by the registrar to the limited liability company,
- and, in accordance with Article 48(3), shall be signed by the registrar and sealed with the registrar's seal (if any).
- (7) A certificate of formation shall be conclusive evidence that –
- (a) a declaration has been delivered to the registrar;
  - (b) the limited liability company is formed under this Law;
  - (c) the requirements of this law have been complied with in respect of –
    - (i) registration,
    - (ii) all matters precedent to registration, and
    - (iii) all matters incidental to registration,in respect of the limited liability company.
- (8) The registration of a limited liability company and thereby its formation shall have effect from the date of issue of its certificate of formation and shall cease to have effect upon the cancellation of registration of the limited liability company in accordance with Article 6.

## 5 Amendment of declaration

- (1) If during the existence of a limited liability company, a manager or, if there is no manager, any member becomes aware that –
  - (a) any statement in a declaration was false when made; or
  - (b) any change (other than a change of the registered office of limited liability company) is made or occurs in respect of any of the particulars of the declaration delivered to the registrar under Article 4(1),

an amendment statement signed by an authorized person specifying the nature of the change shall, within 21 days of such a manager or member, as the case may be, becoming aware of the false statement or of the date of the change, be delivered to the registrar.
- (2) Subject to Article 7, upon delivery of an amendment statement under paragraph (1), if the registrar is satisfied that the change complies with the requirements of this Law, the registrar shall register the amendment statement and issue to the limited liability company an amended certificate of formation giving effect to the change and in accordance with Article 48(3) the certificate of formation shall be signed by the registrar and sealed with the registrar's seal (if any).
- (3) A limited liability company that fails to deliver an amendment statement in accordance with paragraph (1) shall be guilty of an offence.

## 6 Cancellation of registration

- (1) The registrar shall cancel the entry in the register relating to the limited liability company and issue a certificate of cancellation of the limited liability company's registration where –
  - (a) the registrar has been notified of the completion of the winding up of the affairs of the limited liability company pursuant to Regulations made under Article 60(2)(f); or
  - (b) the registrar has been notified under Article 36(2) of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>3</sup>.
- (2) On cancelling a limited liability company's registration under paragraph (1) the registrar shall publish a notice of that fact.
- (3) A certificate of cancellation of a limited liability company's registration issued by the registrar under paragraph (1) shall be conclusive evidence as to the cancellation of the registration of the limited liability company.
- (4) Notwithstanding paragraph (3), where the registration of a limited liability company has been cancelled under this Article, on an application made by –
  - (a) a person who was a member immediately before the cancellation; or
  - (b) any other person appearing to the Court to be interested,

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 the registration void.



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- (5) In making an order under paragraph (4), the Court may give such directions and make such provisions as seem to the Court to be just, including directions and provisions –
    - (a) with the aim of placing the limited liability company and all other persons in the same position as nearly as may be as if the registration of the limited liability company had not been cancelled; 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.
  - (6) The person on whose application the order under paragraph (4) 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 Court to the registrar for registration.
  - (7) A person who fails to comply with paragraph (6) is guilty of an offence.

## **7 Name of limited liability company**

- (1) The registered name of a limited liability company shall end with the words “Limited Liability Company” in full or either of the abbreviations “LLC” or “L.L.C.” and notwithstanding its registered name, a limited liability company may use such words and abbreviations interchangeably when providing its name in the ordinary course of business where convenient, provided such use is not misleading.
- (2) An application to reserve the name of a limited liability company may be made by an authorized person and delivered to the registrar in the prescribed form stating the proposed name of the limited liability company and the registrar may reserve that name for the exclusive use of the applicant.
- (3) The registrar may refuse to register a declaration or an amendment statement or reserve the name of a limited liability company where the name to be registered is, in the registrar’s opinion, in any way misleading or otherwise undesirable.
- (4) If, in the opinion of the registrar, the name by which a limited liability company has been registered is misleading or otherwise undesirable, the registrar may direct the limited liability company to change it.
- (5) Subject to paragraph (6), the limited liability company 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 company 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 company shall comply with the direction; and

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- (b) may order the registrar to pay the limited liability company such sum (if any) as it thinks fit in respect of the expenses to be incurred by the limited liability company in complying with the direction where the Court is of the opinion that the registrar has acted negligently, or in bad faith in respect of the name that was registered prior to the making of the direction.
- (8) A change of name of a limited liability company shall take effect upon an amended certificate of formation being issued in respect of it by the registrar under Article 5(2).
- (9) A change of name of a limited liability company does not affect any rights or liabilities of the limited liability company or render defective any legal proceedings by, or against it, and any legal proceedings that might have been continued or commenced against it under its former name may be continued or commenced against it under its new name.
- (10) Where a limited liability company 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 company shall deliver to the Judicial Greffier a copy of the amended certificate of formation issued by the registrar pursuant to Article 5(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 company 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 company –
- (a) its name;
  - (b) any number or other identifying code assigned to it by the registrar; and
  - (c) the words “registered as a limited liability company in Jersey”.
- (13) A limited liability company that fails to comply with paragraph (5), (10) or (12) shall be guilty of an offence.

## **8 Registered office**

- (1) A limited liability company shall have a registered office in Jersey.
- (2) A limited liability company does not comply with paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being that the premises may be used as the registered office of the limited liability company.
- (3) Subject to paragraphs (4) and (5), a limited liability company may change the address of its registered office from time to time by giving notice to the registrar.
- (4) A change of the address of the registered office of a limited liability company shall take effect on the registration by the registrar of the notice given under paragraph (3), but until the end of the period of 14 days beginning on the date on which it is registered, a person may validly

serve any document on the limited liability company at its previous registered office.

- (5) The registrar may refuse to register a notice given under paragraph (3), if he or she is not satisfied that the occupier of the premises that are to be the registered office of the limited liability company authorizes the use of the premises as the registered office of the limited liability company.
- (6) A limited liability company shall keep at its registered office the following records –
  - (a) a document containing a list of the name and addresses of each member and manager of the limited liability company;
  - (b) a copy of the declaration;
  - (c) a copy of any other statement delivered to the registrar under this Law;
  - (d) a copy of the certificate of formation and any other certificate issued by the registrar under this Law;
  - (e) a copy of the LLC agreement and each amendment made to it;
  - (f) a statement of the amount of any contributions agreed to be made by each member and the time at which, or events on the happening of which, the contributions are to be made;
  - (g) a statement of the amount of money and nature and value of any other property or services contributed by each member and the dates that the contributions were made;
  - (h) a statement of the amount of contributions returned to members and the dates that the contributions were returned; and
  - (i) such other particulars as may be prescribed.
- (7) 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; and
  - (b) subject to paragraph (9), available for inspection and copying without charge at the limited liability company's registered office, during the ordinary business hours of the limited liability company, at the request of a member or manager.
- (9) Notwithstanding paragraph (8), but subject to any other provision to the contrary in this Law or any other enactment, the LLC agreement may restrict a member's access to –
  - (a) documents kept under paragraph (6)(f), (g) or (h) to the extent that they relate to contributions made by other members and under the LLC agreement such information is intended to be kept confidential;
  - (b) any other information –
    - (i) the disclosure of which is believed in good faith to not be in the best interests of the limited liability company or could damage the limited liability company or its business, or

- (ii) which the limited liability company is required by any other enactment or by agreement to keep confidential.
- (10) The limited liability company shall amend the list kept under paragraph (6)(a) within 28 days after any change in the particulars contained in it.
- (11) A limited liability company 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.
- (12) A limited liability company that fails to comply with the requirements of paragraph (6), (7), (8)(b), (10) or (11) shall be guilty of an offence.

## **9 Limited liability company secretary**

- (1) Every limited liability company, 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 if, for any reason the secretary is unable to carry out that function.
- (2) The duty to have a secretary shall cease only upon cancellation of a limited liability company's registration under Article 6 or in any circumstances described in Regulations made under this Law concerning the secretary's appointment.
- (3) The secretary or a deputy secretary must be –
  - (a) a company that is –
    - (i) a member or manager in the limited liability company and has a registered office in Jersey, or
    - (ii) registered under Part 2 of the Financial Services (Jersey) Law 1998<sup>4</sup> 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 member or manager in the limited liability company 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 company must appoint a new secretary no later than 28 days after that cessation.
- (5) A limited liability company that fails to comply with the requirements in paragraphs (1) or (4) shall be guilty of an offence.

**10 Records to be held by secretary**

- (1) Except as provided in Regulations made under Article 60, the secretary shall keep for 10 years at a place in Jersey all the accounting records and returns of the limited liability company that are provided to the secretary by the limited liability company under this Law.
- (2) If the secretary sends any 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.
- (3) A secretary who fails to comply with paragraph (1) or (2) shall be guilty of an offence.

**11 Service of documents on limited liability company**

The service of a document on a limited liability company may be effected by sending it by post or delivering it to the registered office of the limited liability company.

**12 Series of members, managers, LLC interests or assets.**

- (1) Subject to the LLC agreement, a limited liability company may apply to the registrar to create one or more designated series consisting of members, managers, LLC interests or assets, each of which shall have legal personality separate from that of its members, the limited liability company and any other series thereof but shall not be a body corporate.
- (2) Subject to this Article, this Law shall apply in relation to a series as if a reference in this Law –
  - (a) to a limited liability company were a reference to the series;
  - (b) to a manager of a limited liability company were a reference to a manager of the series;
  - (c) to an LLC agreement were a reference to the LLC agreement provisions relating to the series;
  - (d) to the formation and dissolution of a limited liability company were a reference to the formation of the series;
  - (e) to a member of a limited liability were a reference to a member of the series;
  - (f) to an LLC interest in the limited liability company were a reference to the assets and liabilities of the series;
  - (g) to the assets and liabilities of a limited liability company were a reference to the assets and liabilities of the series;
  - (h) to the records of a limited liability company were a reference to the records of the series; and
  - (i) to the secretary and deputy secretary of a limited liability company were a reference to the secretary and deputy secretary of the series.
- (3) An application under paragraph (1) shall be in the form of a declaration.

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- (4) The name of a series shall be the name of the limited liability company followed by “Series”, in turn followed by a name or number, or both, that clearly distinguishes that series from any other of the same limited liability company.
  - (5) The registered office of the series shall be the registered office of the limited liability company and service of a document on a series may be effected by sending it by post or delivering it to that registered office.
  - (6) A series may have separate rights, powers or duties with respect to specified property or liabilities of the limited liability company or profits and losses associated with specified property or liabilities, and any such series may have a separate business purpose or investment objective.
  - (7) A series of a limited liability company may not own an LLC interest in the limited liability company but, subject to the LLC agreement, a series of a limited liability company may own an LLC interest in any other series of the limited liability company.
  - (8) Following the formation of a series, and subject to the LLC agreement and paragraph (9) –
    - (a) the debts, liabilities and expenses incurred, contracted for or otherwise existing whether arising in contract under customary law or otherwise with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series of the limited liability company; and
    - (b) none of the debts, liabilities and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally, or any other series of the limited liability company, shall be enforceable against the assets of such series.
  - (9) Paragraph (10) or any other provision pursuant to that paragraph in an LLC agreement shall not –
    - (a) restrict a series or limited liability company on behalf of a series from agreeing in the LLC agreement or otherwise that any or all of the debts, liabilities, and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally, or any other series of the limited liability company, shall be enforceable against the assets of such series;
    - (b) restrict a limited liability company from agreeing in the LLC agreement or otherwise that any or all of the debts, liabilities and expenses incurred, contracted for or otherwise existing with respect to a series shall be enforceable against the assets of the limited liability company generally; or
    - (c) prevent a member or manager agreeing in the LLC agreement, or otherwise, from being liable personally for any or all of the debts and other liabilities of one or more series.
  - (10) Assets of a series may be held directly or indirectly, including in the name of such series, through a nominee or otherwise.
  - (11) Records maintained for a series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or

allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets of such series separately from the other assets of the limited liability company, or any other series thereof.

- (12) Subject to the LLC agreement, any event specified under this Law or in an LLC agreement that causes a member or manager to cease to be a member or manager with respect to a series shall not, in itself, cause such member or manager to cease to be a member or manager of the limited liability company or with respect to any other series thereof (and vice versa).

### **PART 3**

#### **MEMBERS AND LLC INTERESTS**

##### **13 Admission of members and LLC interests**

- (1) In connection with the formation of a limited liability company, a person is admitted as an initial member of the limited liability company upon the later to occur of –
- (a) the issuance of the certificate of formation of the limited liability company; or
  - (b) the time provided in and upon compliance with the LLC agreement or, if the LLC agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.
- (2) After the formation of a limited liability company, a person may be admitted as a member of the limited liability company in the following circumstances –
- (a) in the case of a person acquiring an LLC interest from, or being issued with an LLC interest by, the limited liability company, at the time provided in and upon compliance with the LLC agreement, or if the LLC agreement does not so provide, upon –
    - (i) the consent of all members, and
    - (ii) the person's admission being reflected in the records of the limited liability company;
  - (b) in the case of an assignee of an LLC interest, as provided in Article 43 and at the time provided in and upon compliance with the terms of the LLC agreement or, if the LLC agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company;
  - (c) in all other cases, at the time provided in and upon compliance with the LLC agreement, or if the LLC agreement does not so provide, upon –
    - (i) the consent of all members, and

- 
- (ii) the person's admission being reflected in the records of the limited liability company.
- (3) If the requirements for or conditions to an admission contained in the LLC agreement have been complied with in respect of a person (or, to the extent permitted by the LLC agreement, waived), any such person, howsoever admitted, shall without the requirement for any further actions or formalities, be deemed to have become a member and adhered to and agreed to be bound by the terms and conditions of the LLC agreement from that date as if that person and all existing members and any other parties to the LLC agreement had together duly executed and delivered the LLC agreement.
- (4) Subject to an LLC agreement, a person may be admitted to a limited liability company as a member of the limited liability company and may receive an LLC interest in, or be granted other rights in respect of, the limited liability company without making a contribution or being liable to make a contribution to the limited liability company.
- (5) Subject to an LLC agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring an LLC interest in the limited liability company.
- (6) Subject to an LLC agreement, a person may be admitted as the sole member of a limited liability company without making a contribution, or being liable to make a contribution, to the limited liability company or without acquiring an LLC interest in the limited liability company.
- (7) Subject to an LLC agreement or any agreement with the limited liability company, a member shall have no pre-emptive right to subscribe for any issue of LLC interests or any other interest in a limited liability company.
- (8) Subject to an LLC agreement, a member's LLC interest may (but need not) be evidenced by a certificate of LLC interest issued by the limited liability company.
- (9) A certificate of LLC interest issued by or on behalf of a limited liability company specifying that a person is a member of that limited liability company (and specifying such additional information, if any, as the limited liability company may determine) and purportedly signed (including by an electronically affixed signature) with the express or implied authority of the limited liability company, is admissible in evidence as proof of that person's membership of the limited liability company and as proof of that additional information in respect of that member's LLC interest as may have been included in the certificate by the limited liability company.
- (10) An LLC interest of a member in a limited liability company is movable property.
- (11) A member has no interest in any specific property of the limited liability company.
- (12) Notwithstanding any other provision of this Law, a limited liability company shall not issue bearer LLC interests, bearer certificates or bearer coupons and any issue or purported issue of such shall be void.



- (13) In paragraph (12), “bearer” means a document where title to the document or to what the document represents is transferred, or purported to be transferred solely by delivery of such document.

#### **14 Classes of members**

- (1) An LLC agreement may provide for classes or groups of members having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members.
- (2) Unless otherwise specified by the LLC agreement –
- (a) the rights, powers and duties of such classes or groups of members may only be varied by a vote at a separate meeting or with the consent in writing of such members; and
  - (b) in respect of every such separate meeting, vote or consent in writing, the provisions of this Law relating to meetings, votes and consent in writing of members of the limited liability company shall apply as if reference to such members were reference to such classes or groups of members.

#### **15 Meetings of members**

- (1) An LLC agreement may make provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.
- (2) Unless otherwise provided in the LLC agreement, a meeting of members may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting.

#### **16 Voting of members**

- (1) An LLC agreement may –
- (a) provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or class of LLC interest or group of members;
  - (b) provide that any member or class or group of members shall have no voting rights;
  - (c) grant to all or certain identified members or a specified class of LLC interest or group of members the right to vote separately or

with all or any class of LLC interest or group of members or managers, on any matter,

and voting by members may be on a per capita, number, financial interest, class, group or any other basis.

- (2) Subject to an LLC agreement or except as otherwise provided by this Law, any vote (or consent) of members shall be passed (or given) if passed (or given) by members who together hold a majority of the total rights to the profits of the limited liability company, but where that results in no members with a right to vote or provide consent, the members may vote or consent by a simple majority in number.
- (3) Subject to an LLC agreement, on any matter that is to be voted on, consented to or approved by members, the matter may be dealt with without a meeting, without prior notice and without a vote by consent in writing, signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted.
- (4) Subject to the LLC agreement, if a person (whether or not then a member), consenting as a member to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), such a person shall be deemed to have consented as a member at such future time so long as such a person is then a member.
- (5) Subject to an LLC agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing or by means of electronic communication or as.
- (6) Subject to an LLC agreement, a consent transmitted by electronic communication by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this Article.

#### **17 Resignation as a member on insolvency etc.**

- (1) Subject to an LLC agreement, or unless all members otherwise consent, a person shall be treated as having resigned as a member of a limited liability company immediately upon the happening of any of the following events –
  - (a) the member –
    - (i) makes an assignment for the benefit of creditors,
    - (ii) is insolvent or becomes bankrupt or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding,
    - (iii) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any enactment,

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- (iv) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature, or
  - (v) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's assets; or
- (b) 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any enactment, if the proceeding has not been dismissed; or
  - (c) if within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's assets, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.
- (2) If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, then the member's personal representative (or equivalent, as applicable) may exercise all of that member's rights for the purpose of settling the member's estate or administering the member's property, including –
    - (a) any power under an LLC agreement of an assignee to become a member;
    - (b) exercising any rights of transfer in respect of all or part of the member's LLC interest.

## **18 Liabilities to third parties**

- (1) Except as otherwise provided by this Law, the debts and other liabilities of a limited liability company, whether arising in contract under customary law or otherwise, shall be solely the debts and other liabilities of the limited liability company, and neither a member nor a manager of a limited liability company shall be personally liable for any such debts or other liabilities of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.
- (2) Notwithstanding paragraph (1), a member or manager may, in accordance with the LLC agreement or otherwise, agree to be liable personally for any or all of the debts and other liabilities of the limited liability company.

## **19 Member may bind limited liability company**

Subject to the LLC agreement, a member shall have the authority to bind the limited liability company if no manager has been appointed or holds office.

**20 Resignation of member**

A member may resign from and cease to be a member of a limited liability company only at the time or upon the happening of events specified in an LLC agreement and in accordance with the LLC agreement or as otherwise provided in this Law or with the consent of all of the other members.

**PART 4****MANAGERS****21 Management of limited liability company**

- (1) An LLC agreement may –
  - (a) provide for the management of a limited liability company by a manager; and
  - (b) provide for the appointment of a person as a manager of a limited liability company.
- (2) If an LLC agreement provides for the management of a limited liability company by a manager and for the appointment of a person as a manager of a limited liability company in accordance with paragraph (1), the management of the LLC shall vest in that manager to the extent provided.
- (3) A manager shall hold the offices and have the responsibilities accorded to the manager by or in the manner provided in the LLC agreement.
- (4) Where the LLC agreement –
  - (a) does not provide for the management of a limited liability company by a manager; or
  - (b) provides for the management of a limited liability company by a manager but no manager is appointed,the management of the limited liability company shall vest in its members.
- (5) A limited liability company may have more than one manager.
- (6) Subject to the LLC agreement, each manager shall have the authority to bind the limited liability company.
- (7) Subject to this Law, a manager shall cease to be a manager only as provided in the LLC agreement.
- (8) If the LLC agreement provides for the appointment of a manager but is silent as to removal, unless a contrary intention appears in the LLC agreement there shall be taken to be included in the LLC agreement a provision that a manager may be removed by a vote or with the consent of the members of the limited liability company.

**22 Contributions by manager**

- (1) A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member.
- (2) A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, subject to the LLC agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

**23 Classes of managers**

An LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers.

**24 Meetings of managers**

- (1) An LLC agreement may make provision relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.
- (2) Unless otherwise provided in the LLC agreement, a meeting of managers may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting.

**25 Voting of managers**

- (1) An LLC agreement may –
  - (a) provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the LLC agreement a class or group of LLC interests that was not previously outstanding;
  - (b) grant to all or certain identified managers or a specified class or group of managers the right to vote, separately or with all or any class or group of managers or members, on any matter,and voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

- (2) Subject to the LLC agreement and except as otherwise provided in this Law, any matter may be decided by a vote of the managers or class or group of managers shall be decided on a simple majority of votes.
- (3) Unless otherwise provided in the LLC agreement, on any matter that is to be voted on, consented to or approved by managers, the managers may take such action without a meeting, without prior notice and without a vote if consented to, in writing or by electronic communication, by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted.
- (4) Subject to the LLC agreement, if a person (whether or not then a manager) consenting as a manager to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a manager at such future time so long as such person is then a manager.
- (5) Subject to the LLC agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and such proxy may be granted in writing or by means of an electronic communication.
- (6) Subject to the LLC agreement, a consent transmitted by means of an electronic communication by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this Article.

## **26 Reliance on information, reports etc. by member or manager**

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager or member, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member or manager reasonably believes are within such other person's professional or expert competence including –

- (a) information, opinions, reports or statements as to –
  - (i) the value and amount of the assets, liabilities, profits or losses of the limited liability company, or
  - (ii) the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and liabilities of the limited liability company or to make reasonable provision to pay such claims and liabilities; or
- (b) any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

## **27 Delegation of rights and powers to manage**

- (1) Subject to the LLC agreement, a member or manager of a limited liability company has the power and authority to delegate to one or more other persons their rights and powers to manage and control the business and

affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons.

- (2) Subject to the LLC agreement delegation by a member or manager under paragraph (1) –
  - (a) shall be irrevocable if it states that it is irrevocable; and
  - (b) shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

## **28 Resignation of manager**

- (1) A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in the LLC agreement and in accordance with the LLC agreement.
- (2) An LLC agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company.
- (3) Notwithstanding that an LLC agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers.
- (4) If the resignation of a manager contravenes the LLC agreement, in addition to any remedies otherwise available under any other enactment a limited liability company may recover from the resigning manager damages for breach of the LLC agreement and offset the damages against the amount otherwise distributable to the resigning manager.

## **PART 5**

### **FINANCE**

## **29 Form of contribution**

The contribution of a member to a limited liability company may be in the form of cash, property or services rendered, or an undertaking or other obligation to contribute cash or property or to perform services.

## **30 Liability for contribution**

- (1) Subject to the LLC agreement, a member is liable to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason.

- (2) If a member does not make the required contribution of property or services, the member is liable at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made.
- (3) The option to contribute cash under paragraph (2) shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member pursuant to the LLC agreement or applicable law.
- (4) Subject to the LLC agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in contravention of this Article may be compromised only by consent of all the members.
- (5) Notwithstanding any such compromise under paragraph (4), a creditor of a limited liability company who extends credit, after the entering into of an LLC agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return.
- (6) A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member.
- (7) In this Article “conditional obligation” includes a contribution payable upon a discretionary call of a limited liability company prior to the time the call occurs.

### **31 Allocation of profit and losses**

The profits and losses of a limited liability company –

- (a) shall be allocated among the members, and among classes or groups of members, in the manner provided in the LLC agreement; or
- (b) if the LLC agreement does not provide for the allocation as in paragraph (a), profits and losses, shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

### **32 Allocation of distributions**

Distributions of cash or other assets of a limited liability company –

- (a) shall be allocated among the members, and among classes or groups of members, in the manner provided in the LLC agreement; or
- (b) if the LLC agreement does not provide for the allocation as in paragraph (a), distributions, shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the



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contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

## **PART 6**

### **DISTRIBUTIONS**

#### **33 Payment of distributions**

- (1) An LLC agreement may provide for the distribution of the assets of the limited liability company in such manner, time and form as provided therein, including distributions in cash and in kind.
- (2) An LLC agreement may provide for the establishment of a record date with respect to distributions by a limited liability company.

#### **34 Distributions upon resignation**

Except as otherwise provided in this Part, upon resignation any resigning member is entitled to receive any distribution to which such member is entitled pursuant to the LLC agreement and, if not otherwise provided in the LLC agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's LLC interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

#### **35 Distribution in kind**

- (1) Subject to the LLC agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash.
- (2) Subject to the LLC agreement, a member may only be compelled to accept the member's allocated percentage of a distribution of any asset in kind from a limited liability company to its members, if that percentage is equal to the percentage in which the member shares in distributions from the limited liability company.

#### **36 Right to distribution**

Subject to Article 37, any Regulations made under Article 60 and the LLC agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to, all remedies available to a creditor of a limited liability company with respect to the distribution.

#### **37 Limitation on distribution**

- (1) Subject to paragraph (2), a limited liability company shall not make a distribution to a member if, at the time when and immediately after payment is made, the limited liability company is insolvent.

- (2) For the purposes of paragraph (1), “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits programme.
- (3) For a period of 6 months from the date of receipt by a member of a distribution or purported release from an obligation in contravention of paragraph (1) or in the case of fraud, such member shall be liable to the limited liability company for the amount of the distribution or for performance of the obligation purportedly released.

## **PART 7**

### **ASSIGNMENT OF LLC INTEREST**

#### **38 Assignment of LLC interest**

- (1) Subject to the LLC agreement, an LLC interest is assignable in whole or in part.
- (2) Notwithstanding anything to the contrary under any other enactment, an LLC agreement may provide that an LLC interest may not be assigned prior to the dissolution and winding up of the limited liability company.

#### **39 Assignee right to participate in management of limited liability company**

The assignee of an LLC interest not admitted as a member shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in the LLC agreement or otherwise upon the vote or consent of all of the members of the limited liability company.

#### **40 Assignee right to exercise rights and powers of a member**

Subject to the LLC agreement –

- (a) an assignment of an LLC interest does not entitle the assignee (being a person not yet admitted as a member) to become or to exercise any rights or powers of a member; but
- (b) an assignment of an LLC interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned.

#### **41 No liability solely as a result of the assignment**

Subject to this Law, the LLC agreement and except to the extent assumed by agreement, until an assignee of an LLC interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

**42 Ceasing of rights of member on assignment**

- (1) Subject to the LLC agreement, a member ceases to be a member and to have the power to exercise any rights or powers of a member upon a person to whom the member has assigned all of the member's LLC interest becoming a member but the granting of a security interest, or the creation of any other encumbrance in or against, any or all of the LLC interest of a member shall not in itself cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.
- (2) Whether or not an assignee of an LLC interest becomes a member, the assignor is not released from liability to the limited liability company under Articles 30(1) and 37(3).

**43 Right of assignee to become a member**

An assignee of all or part of an LLC interest may become a member in respect of the assigned LLC interest –

- (a) if permitted in the LLC agreement, in accordance with the terms of the LLC agreement; or
- (b) if the LLC agreement is silent on such matters, with the approval of all of the members of the limited liability company.

**44 Rights, powers and liabilities of assignee upon becoming a member**

- (1) An assignee who has become a member has, to the extent assigned and transferred, the rights and powers, and is subject to the restrictions and liabilities, of a member contained in the LLC agreement, this Law and any other enactment.
- (2) Notwithstanding paragraph (1), unless otherwise provided in an LLC agreement, an assignee that becomes a member in respect of all or part of an LLC interest –
  - (a) is liable for the obligations of the assignor to make contributions as provided for in Article 30 in respect of the LLC interest (or part thereof) so transferred unless they were unknown to the assignee at the time the assignee became a member and could not be ascertained from the LLC agreement; and
  - (b) is not liable for any other obligations of the assignor with regard to distributions.

**45 Acquisition by limited liability company of interest of member or manager**

- (1) Subject to the LLC agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any LLC interest or other interest of a member or manager in the limited liability company if immediately following the acquisition, the LLC does not become insolvent.
- (2) Notwithstanding an acquisition referred to in paragraph (1), a limited liability company may not become a member of itself and any such LLC

interest so acquired by the limited liability company shall be deemed cancelled.

## **PART 8**

### **MISCELLANEOUS AND FINAL PROVISIONS**

#### **46 Rules of customary Law**

The rules of customary Law applicable to partnerships shall apply to limited liability companies except in so far as they are inconsistent with the express provisions of this Law or the nature of a limited liability company including that –

- (a) the liability of its members is limited to their contributions pursuant to this Law; and
- (b) it is managed by its members or by one or more managers that may or may not be members, in accordance with this Law.

#### **47 Fiduciary and other duties owed and not owed**

- (1) A manager in exercising the manager's powers and discharging the manager's duties, shall –
  - (a) act honestly and in good faith with a view to the best interests of the limited liability company; and
  - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (2) Subject to this Law, the rights and duties of the members in a limited liability company shall, as between themselves, be determined by the LLC agreement.

#### **48 Appointment and functions of registrar**

- (1) The registrar of companies appointed under Article 196 of the Companies (Jersey) Law 1991<sup>5</sup> shall be the registrar of limited liability companies.
- (2) The registrar shall maintain a register of limited liability companies which shall contain 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 companies.
- (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.

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- (6) The registrar, on application or of his or her own motion, 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 company; 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 his or her policy as to applications made under this Law, including –
    - (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; or
    - (f) the appeal process that will apply in a case where a person is aggrieved by the registrar's decision to remove the material.

#### **49 Annual administration fee**

- (1) The Commission may require the payment to it by a limited liability company of a published annual administration fee.
- (2) The annual administration 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.
- (3) The States may by Regulations provide that, in addition to the annual administration fee, a limited liability company shall pay to the Commission annually such amount as the Minister may by Order specify.
- (4) The annual administration fee and the annual additional amount (if any) shall be payable by a limited liability company to the Commission by the time specified in the notice of fees published by the Commission in accordance with paragraph (2) or, if no such time is specified, before the end of February in each year following the year in which the limited liability company is established.
- (5) An annual administration fee and an annual additional amount (if any) are debts due by a limited liability company to the Commission, and are recoverable accordingly in a court of competent jurisdiction.
- (6) The Commission shall pay to the Treasurer of the States the additional amounts that are paid to the Commission under an Order made under paragraph (2).

#### **50 Fees, charges and forms**

- (1) Subject to paragraph (2), the Commission may require the payment to it of fees in respect of the performance by the registrar of his or her

functions under this Law or a charge for the provision by the registrar of any service, advice, or assistance.

- (2) A fee referred to in under paragraph (1) is payable if it has been published and is in effect in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998.
- (3) The Commission may in addition to the payment of fees under paragraph (1), 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 and required by this Law, which shall be payable when the copy of the document is delivered.
- (4) Where a fee mentioned in paragraph (1) is payable in respect of the performance of a function by the registrar, the registrar does not need to take any action until the fee is paid.
- (5) Where the fee mentioned in paragraph (1) 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.
- (6) 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 delivered or authenticated.

## **51 Form of documents to be delivered to registrar**

Where any Article of this Law requires a document to be delivered to the registrar, but the form of the document has not been published, it shall be sufficient compliance with that requirement if –

- (a) the document is delivered in a form and manner that are acceptable to the registrar; or
- (b) any information to which the requirement relates is delivered in material, other than a document, that is acceptable to the registrar,

and the document or material, as the case may be, is accompanied by the published fee, if any.

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

- (1) Subject to the provisions of this Article, 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;

- (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).

### **53 Destruction of old records**

- (1) Where a limited liability company has been dissolved, the registrar may, at any time after 10 years from the date of the dissolution, destroy any records relating to that limited liability company in the registrar's possession or under the registrar's control.
- (2) After 10 years from the dissolution of an incorporated limited liability company no responsibility rests on a member, manager or a 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.

### **54 Form of limited liability company's records**

- (1) The records that a limited liability company is required by this Law to keep 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.
- (2) A limited liability company shall 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 required by this Law to be kept.
- (3) Each manager of a limited liability company shall take reasonable steps to ensure that the limited liability company'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 company, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the limited liability company in any other legal person or arrangement.

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- (4) 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 by Article 10(1) and (2) to be kept.
  - (5) A person who ceases to be the secretary of a limited liability company in accordance with Article 9(2) must –
    - (a) retain all the documents of the limited liability company kept by that person in accordance with Article 10 and take the reasonable precautions described in paragraphs (2)(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 9(4), or such other person as may be specified in Regulations made under Article 58; and
    - (b) deliver those documents to the new secretary appointed under Article 9(4) within 14 days of being notified of the name and address of the new secretary, or to such other person as may be specified in Regulations under Article 60, within such period as may be specified in those Regulations.
  - (6) A limited liability company that fails to comply with paragraph (2), is guilty of an offence and liable to a fine of level 3 on the standard scale.
  - (7) A manager who fails to comply with the requirements of paragraph (3) shall be guilty of an offence.
  - (8) A secretary who fails to comply with the requirements of paragraph (4) shall be guilty of an offence.
  - (9) A person who fails to comply with the requirements of paragraph (5) shall be guilty of an offence.

## **55 Registration in the Public Registry**

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

## **56 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 kept under Article 8(6) or to 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 company” or any contraction of those words when the person is not registered as a limited liability company under this Law or otherwise established as a limited liability company 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 member or manager in a limited liability company when the person is not, or implying that a person is a member or manager in a body which is not a limited liability company when the body is a limited liability company, shall be guilty of an offence.

### **57 Criminal liability of partners, directors and other officers**

- (1) Where an offence under this Law committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary, or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member’s functions of management as if he or she were a director of the body corporate.

### **58 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 Minister or any person who is, or is acting as, an officer, employee or agent in an administration of the States for which the 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, employee or agent of the registrar.

- (3) The limitation of liability under this Article does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>6</sup>.

## 59 Penalties

- (1) The penalty for an offence under Articles 5(3), 6(7), 7(13), 8(12), 9(5), 10(3) or 53(6), (7), (8) or (9) shall be a fine not exceeding level 3 on the standard scale.
- (2) The penalty for an offence under Articles 56(1), (3) or (4) shall be a fine and 2 years imprisonment.

## 60 Regulations

- (1) The States may by Regulations make such other provision as the States think fit for the purposes of carrying this Law into effect.
- (2) Without prejudice to the generality of paragraph (1), Regulations made under this Article may –
- (a) create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine;
  - (b) provide for mergers and demergers of limited liability companies;
  - (c) provide for mergers of limited liability companies with bodies that are incorporated in Jersey but are not limited liability companies;
  - (d) provide for mergers of limited liability companies with bodies incorporated outside Jersey;
  - (e) provide for the continuation of limited liability companies in Jersey and outside Jersey;
  - (f) provide for the winding up and dissolution of solvent and insolvent limited liability companies or a series established under Article 10;
  - (g) provide for the disqualification of persons for office as members or managers, secretaries or deputy secretaries of limited liability companies;
  - (h) provide for the circumstances in which the duty to appoint a secretary ceases and the duties of a secretary or former secretary in respect of keeping or delivery of accounting records;
  - (i) provide for the accounts and audit of limited liability companies;
  - (j) provide for and apply in respect of limited liability companies, with or without modifications –
    - (i) any provisions in or made under the Companies (Jersey) Law 1991<sup>7</sup>, or
    - (ii) any provisions in or made under the Foundations (Jersey) Law 2009<sup>8</sup>,that apply, in respect of a company or foundation under either of those Laws, to a matter to which paragraph (1) refers;

- (k) make such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including provision making amendments to any other enactment as appear to the States to be expedient –
  - (i) for the general purposes, or any particular purpose, of this Law,
  - (ii) in consequence of any provision made by or under this Law.

## **61 Orders**

- (1) The Minister may by Order make provisions prescribing any matter which is to be prescribed under this Law.
- (2) An Order made under this Law may contain such incidental provisions as the Minister may consider to be necessary or expedient.
- (3) The Minister shall consult the Commission before making any Order under this Law.

## **62 Rules of Court**

The power to make Rules of Court under the Royal Court (Jersey) Law 1948<sup>9</sup> shall include a power to make Rules for the purposes of this Law.

## **63 Citation and commencement**

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

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- 1 *chapter 13.250*
  - 2 *chapter 04.280*
  - 3 *chapter 04.160*
  - 4 *chapter 13.225*
  - 5 *chapter 13.125*
  - 6 *chapter 15.350*
  - 7 *chapter 13.125*
  - 8 *chapter 13.265*
  - 9 *chapter 07.770*