

# STATES OF JERSEY



Jersey

## **DRAFT LIMITED LIABILITY COMPANIES (WINDING UP AND DISSOLUTION) (JERSEY) REGULATIONS 202-**

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**Lodged au Greffe on 14th February 2022  
by the Minister for External Relations and Financial Services  
Earliest date for debate: 29th March 2022**

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**STATES GREFFE**



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## REPORT

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### Background

In September 2018, the States adopted the [Limited Liability Companies \(Jersey\) Law 2018](#) (the “LLC Law”) which provides for the establishment of limited liability companies (“LLCs”) in Jersey. These legal entities are prevalent in the US and share features with both companies and partnerships. The Jersey LLC was introduced with a view to Jersey becoming an increasingly attractive jurisdiction for US business, as well as catering to our US market generally.

Article 60 of the LLC Law provides that the States may make Regulations for the winding up and dissolution of solvent or insolvent LLCs or series thereof.

These Draft Regulations are those envisaged by Article 60(2)(f) of the LLC Law. The Draft Regulations are largely based on the existing winding up and dissolution procedure under the [Companies \(Jersey\) Law 1991](#).

### Consultation

During September 2020, the Government of Jersey published a consultation on the Draft Regulations, seeking comments and views. The Government of Jersey received five responses to the consultation. Those views, together with the views of the Jersey Finance Limited Working Group on LLCs have been considered in finalising the Draft Regulations.

### The Draft Regulations

The Draft Regulations set out the procedures and requirements for the orderly winding up and dissolution of LLCs in Jersey. The provisions are based on the winding up of companies under the Companies (Jersey) Law 1991 (the “Companies Law”) with appropriate changes to reflect the unique features of LLCs.

#### *Part 1*

Part 1 of the Draft Regulations deals with interpretation and permits the winding up of an LLC on the expiry of a fixed period of time or on the happening of a specified event, if it provides notice to the registrar.

It also provides for the just or equitable winding up of an LLC on the application to Court by persons specified in Regulation 3(2) or where it is in the public interest to wind up the LLC.

#### *Part 2*

Part 2 of the Draft Regulations sets out the processes and procedures for the summary winding up of an LLC that:

- a. Has no liabilities;
- b. Has liabilities that have fallen due or that fall due within 6 months of the commencement of the winding up, that it will be able to discharge in full within 6 months of the commencement of the winding up;
- c. Has liabilities that will arise more than 6 months after the commencement of the winding up that it will be able to discharge in full as they fall due; or
- d. Has a combination of liabilities in sub-paragraphs b and c.

A summary winding up is conducted by the LLC’s managers, unless the members approve the appointment of a liquidator to act under Regulation 7. In either case, a statement of solvency must be filed with the registrar. Upon the discharge of liabilities

and distribution of assets in accordance with the LLC agreement, a statement must be filed with the registrar confirming that having made full enquiries, the LLC no longer has assets or liabilities. On registration of that statement by the registrar, the LLC is dissolved.

If, in the course of a summary winding up under Part 2, it becomes apparent that the LLC is not solvent, Regulation 9 provides for the winding up of the LLC to continue as a creditors' winding up under Part 3 of the Draft Regulations.

#### *Part 3*

Part 3 of the Draft Regulations sets out the provisions for a creditors' winding up of an LLC. A creditors' winding up under this Part commences on the approval of the winding up by the LLC's members. Part 3 provides for the appointment of a liquidator, notices to be given and registration of a return by the registrar on completion of the winding up.

#### *Part 4*

Part 4 of the Draft Regulations replicates provisions of the Companies Law relating to transactions by the LLC at an undervalue and giving of preferences by the LLC, setting out the Court's powers in such circumstances.

This Part also sets out who is a relevant person for the purposes of fraudulent or wrongful trading by the LLC and the orders that the Court may make in relation to such persons (Regulation 35). Further provision is also made in respect of extortionate transactions the LLC is or has been a party to (Regulation 36).

The Part provides a duty to cooperate with a liquidator (Regulation 39) and the requirement for the liquidator to report any misconduct it suspects to the Attorney General (Regulation 40). The Attorney General is able to refer any matter to the Jersey Financial Services Commission ("Commission") or the Minister for further investigation. Regulation 41 enables the Minister or the Commission to obtain further information in respect of such investigations.

#### *Part 5*

Part 5 of the Draft Regulations specifies the qualifications of a liquidator (Regulation 45), which align to the Companies Law requirements. It provides for the remuneration of liquidators (Regulation 47) and sets out the offence of corrupt inducement relating to the appointment of a liquidator (Regulation 46).

#### *Part 6*

Part 6 of the Draft Regulations deals with some matters of general application, including references to the Royal Court. This Part also addresses enforcement of manager and liquidators' duties and notification requirements.

Part 7 makes provision for consequential changes arising from the introduction of the LLC and the Draft Regulations. These changes are necessary to the Interpretation (Jersey) Law 1954 and the Proceeds of Crime (Jersey) Law 1999.

This Part also stipulates that the Draft Regulations will be brought into force on the commencement of Article 60 of the LLC Law.

### **Financial and Manpower implications**

There are no resource or manpower implications for the States of Jersey as a result of these Regulations.

**Re-issue Note**

This Project is re-issued to rectify the omission of hyperlinks in the draft Regulations.



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## EXPLANATORY NOTE

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These Regulations provides for the winding up and dissolution of limited liability companies.

*Regulation 1* provides for the interpretation of certain terms used in the Regulations.

*Regulation 2* sets out the circumstances in which a limited liability company of limited duration may be wound up.

*Regulation 3* allows for a limited liability company, other than a limited liability company in respect of which a declaration was made under the Bankruptcy (Désastre) (Jersey) Law 1990 (the “Désastre Law”), to be wound up where the Court is of the opinion that it is just and equitable, or where it is expedient in the public interest, to do so. *Regulation 3* also provides for the procedure to make an application to the Court to wind up a limited liability company. A limited liability company that fails to provide the Act of the Court ordering the winding up the registrar within 14 days after it is made commits an offence and is liable to a fine not exceeding level 3 on the standard scale.

*Regulation 4* provides the types of limited liability companies to which Part 2 applies and makes clear that Part 2 applies to a summary winding up.

*Regulation 5* provides the procedure for the summary winding up of a limited liability company and provides for a statement of solvency to be signed by each manager and to be given to the registrar. A manager who signs a statement of solvency given to the registrar without having reasonable grounds for making the statement commits an offence and is liable to a fine and 2 years imprisonment.

*Regulation 6* provides that the capacity of a limited liability company continues after the commencement of the limited liability company’s summary winding up until its dissolution, however, the limited liability company’s powers are prohibited from being exercised other than for the purposes of realising its assets, discharging its liabilities, and distributing its assets in accordance with *Regulation 8*.

*Regulation 7* provides for the appointment of a liquidator of a limited liability company on or after the commencement of its summary winding up as well as providing the powers and conditions for the appointment of the liquidator.

*Regulation 8* provides for the procedure for dissolution of a limited liability company and for the distribution of its assets on the registration by the registrar of a statement of solvency. A manager or liquidator who signs a statement of solvency given to the registrar without having reasonable grounds for making the statement commits an offence and is liable to a fine and 2 years imprisonment.

*Regulation 9* provides that if after the commencement of a summary winding up a limited liability company has liabilities that it would be unable to discharge then the liquidator or manager must record such opinion, notify each creditor of the opinion, provide a copy of the notice to the registrar and publish the notice in the Jersey Gazette. *Regulation 9* also provides for a creditors meeting to be held at least 14 days after the service of the notice and not more than 28 days after the opinion was recorded. A liquidator or manager who, without reasonable excuse, fails to comply with any obligation under *Regulation 9* commits an offence and is liable to a fine and 2 years imprisonment.

*Regulation 10* enables a limited liability company to approve the termination of a summary winding up if its summary winding up has commenced, it has not received any contribution from a contributory under *Regulation 51*, it has not distributed its assets between its members, and it has discharged its liabilities. The winding up of a

limited liability company is terminated when the limited liability company provides the registrar with a certificate signed by a manager of the limited liability company. A manager who signs a certificate provided to the registrar without having reasonable grounds for believing that the statements in it are true commits an offence and is liable to a fine and 2 years imprisonment.

*Regulation 11* provides that a winding up of a limited liability company is terminated if a summary winding up has commenced and a declaration is made in respect of the limited liability company under the Désastre Law. The termination of a winding up does not affect the validity of anything duly done by any liquidator, manager or other person, or by operation of law, before its termination.

*Regulation 12* provides that Part 3 applies to the winding up of a limited liability company under the Désastre Law otherwise than under Parts 2 or 4. Part 3 applies to a creditors' winding up.

*Regulation 13* provides that a limited liability company in respect of which a declaration was made (and not recalled) under the Désastre Law may with the approval of its members be wound up under Part 3.

*Regulation 14* requires that the limited liability company publish a notice in the Jersey Gazette and provide the notice to the registrar where the members of a limited liability company approve the winding up of a limited liability company under Part 3. If the limited liability company fails to comply with the requirements it commits an offence and is liable to a fine not exceeding level 3 on the standard scale.

*Regulation 15* provides for the commencement and effect of a creditors' winding up.

*Regulation 16* requires a limited liability company in a creditor's winding up to give notice to its creditors of a meeting to be held in Jersey, nominate a person to be the liquidator for the purposes of the creditor's winding up and provide any information concerning the affairs of the limited liability company as the creditors may reasonably require. The managers of a limited liability company in a creditors' winding up must prepare a statement as to the affairs of the limited liability company and must lay the statement before the creditors' meeting and appoint a manager to preside at the meeting. The manager appointed to preside at the meeting must attend the meeting and preside over it. A failure to comply with any of those requirements is an offence punishable by a fine.

*Regulation 17* provides for the appointment of a liquidator. With effect from the conclusion of the creditors' meeting, the person nominated to be the liquidator by the creditors at the creditors' meeting, or if no person is nominated by the creditors at the creditors' meeting, the person nominated by the limited liability company, is appointed as a liquidator. A liquidator appointed under *Regulation 17* must, within 14 days after the appointment, give notice of the appointment signed by the liquidator to the registrar and to the creditors. A liquidator who fails to comply with this requirement commits an offence and is liable to a fine not exceeding level 3 on the standard scale.

*Regulation 18* enables the creditors at a creditors' meeting to appoint a liquidation committee comprising no more than 5 persons to exercise the functions conferred on it by or under these Regulations. If a liquidation committee is appointed, the limited liability company may, with the approval of its members, appoint no more than 5 persons to act as members of the committee.

*Regulation 19* provides that where a creditors' winding up has commenced but no liquidator has been appointed then, during the period before the appointment of a liquidator, the powers of the managers must not be exercised except with the sanction of the Court or to secure compliance with Regulation 16 or to protect the assets of the



limited liability company. A manager who acts outside these restrictions commits an offence and is liable to a fine and six months imprisonment.

*Regulation 20* provides that all costs, charges and expenses properly incurred in a creditors' winding up, including the remuneration of the liquidator (and any expenses of a liquidator under Article 15(6)(a) of the Dormant Bank Accounts (Jersey) Law 2017), are payable out of the assets of the limited liability company in priority to all other claims.

*Regulation 21* provides that in a creditors' winding up, the same rules prevail with respect to persons against whom a declaration has been made under the Désastre Law, subject to the substitution of references to the liquidator and to the winding up respectively for references to the Viscount and to the *désastre*.

*Regulation 22* provides that an arrangement entered into between a limited liability company and its creditors immediately before the commencement of, or in the course of, a creditors' winding up, is binding on the limited liability company and the creditors under certain conditions.

*Regulation 23* requires the liquidator, in the event that a creditors' winding up continues for more than 12 months, to call a meeting of the members of the limited liability company and a meeting of the creditors to be held within 3 months after each one-year anniversary of the commencement of the winding up, or within such longer period approved by the Commission. The liquidator is required to lay before the meetings an account of the liquidator's acts and dealings and of the conduct of the winding up during the preceding year. If a liquidator fails to comply with this Regulation the liquidator commits an offence and is liable to a fine not exceeding level 3 on the standard scale.

*Regulation 24* requires the liquidator, as soon as practicable after the affairs of a limited liability company in a creditors' winding up are wound up, to, among other things, prepare an account of the winding up, call a meeting of the members of the limited liability company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

*Regulation 25* provides the procedure for the voting on and the passing of a resolution at a creditor's meeting.

*Regulation 26* gives the liquidator the power, in a creditors' winding up, with the sanction of the Court or the liquidation committee (or, if there is no such committee, the creditors), to pay a class of creditors in full or compromise any claim by or against the limited liability company. However, the liquidator may, without sanction, exercise any other power of the limited liability company as may be required for its beneficial winding up.

*Regulation 27* gives the meaning of the term "onerous property" and allows the liquidator in a creditors' winding up to disclaim on behalf of the limited liability company any onerous property of the limited liability company.

*Regulation 28* prohibits a disclaimer of a contract lease from taking effect unless a copy of its disclaimer has been served on every person (so far as the liquidator is aware of their addresses) claiming under the limited liability company as a hypothecary creditor or under-lessee.

*Regulation 29* provides for a person who claims an interest in the disclaimed property or a person who is under any liability in respect of the disclaimed property (including a guarantor), not being a liability discharged by the disclaimer, to make an application to the Court for an order to vest disclaimed property in, or for its delivery to, a person so entitled to the property or the trustee for such person. The order may also vest the disclaimed property in a person, or the trustee for such person, who is subject to a

liability in respect of the disclaimed property (including a guarantor), not being a liability discharged by the disclaimer.

*Regulation 30* provides that in a creditors' winding up, a lien or other right to retain possession of a record of a limited liability company is unenforceable to the extent that its enforcement would deny possession of the record to the liquidator. *Regulation 30* does not apply to a lien on a document that gives a title to property and is held as such.

*Regulation 31* empowers the Court to appoint a liquidator where, for any reason, there is no liquidator acting in a creditors' winding up. The Court also has the power to, on reason being given, remove a liquidator in a creditors' winding up and to appoint another liquidator.

*Regulation 32* provides the interpretation of certain terms used in Part 4.

*Regulation 33* provides for the Court, if a limited liability company has at a relevant time entered into a transaction with a person at an undervalue, to make an order as the Court thinks appropriate for restoring the position to what it would have been if the limited liability company had not entered into the transaction.

*Regulation 34* provides for the power to be exercised by the Court where a limited liability company has, at a relevant time, given a preference to a person. The Regulation gives the Court the power, on the application of the liquidator in a creditors' winding up, to make an order as the Court thinks appropriate for restoring the position to what it would have been if the preference had not been given.

*Regulation 35* allows the Court, on the application of the liquidator, to order that persons who were knowingly parties to the carrying on of the business of the limited liability company with intent to defraud creditors or creditors of another person, or for a fraudulent purpose, are liable to make such contributions to the limited liability company's assets as the Court thinks appropriate. *Regulation 35* has effect despite any criminal liability of the relevant person in relation to matters on the grounds of which an order is made.

*Regulation 36* defines a transaction as extortionate if, having regard to the risk accepted by the person providing the credit, the terms of the transaction are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit or the transaction otherwise grossly contravened ordinary principles of fair dealing. Under *Regulation 36*, the Court has the power to make an order with respect to an extortionate transaction which was entered into in the period of 3 years ending with the date of commencement of the creditors' winding up. The order of the Court may make provision to set aside the whole or part of an obligation created by the transaction, to otherwise vary the terms of the transaction or vary the terms on which a security for the purposes of the transaction is held, to require a person who is or was a party to the transaction to pay to the liquidator sums paid to that person, by virtue of the transaction, by the limited liability company, to require a person to surrender to the liquidator property held by the person as security for the purposes of the transaction or to direct accounts to be taken between any persons.

*Regulation 37* enables the Court to direct a person who possesses or controls property or records to which a limited liability company appears in a creditors' winding up, to pay, deliver, convey, surrender or transfer the property or records to the liquidator.

*Regulation 38* provides that any approval given at an adjourned meeting of a limited liability company's creditors is to be treated as having been given on the date on which it was in fact given, and not as having been given on any earlier date.

*Regulation 39* requires certain persons in relation to a limited liability company being wound up in a creditors' winding up to cooperate with the liquidator by providing

information about the limited liability company that is reasonably required by the liquidator at any time after the commencement of the winding up, by attending on the liquidator at reasonable times and by notifying the liquidator in writing of any change of the person's address, employment or name. A person who fails to comply with those requirements commits an offence and is liable to a fine and 6 months imprisonment.

*Regulation 40* imposes an obligation on the liquidator to report to the Attorney General if it appears to the liquidator in a creditors' winding up that the limited liability company being wound up has committed a criminal offence, a person has committed a criminal offence in relation to the limited liability company being wound up or the conduct of a manager of the limited liability company being wound up justifies applying for a disqualification order against the manager. Where a report is made to the Attorney General, the Attorney General may refer the matter to the Minister or the Commission for further enquiry.

*Regulation 41* empowers the Minister or the Commission to require a person who is or may be in possession of information relating to a matter which they believe to be relevant to the investigation of the matter to produce and make available to them all records in the person's custody or power relating to that matter, to attend before them at reasonable times and on reasonable notice and otherwise to give them all assistance in connection with the investigation which the person is reasonably able to give. The person must comply with the requirement imposed by the Minister or the Commission or that person commits an offence and is liable to a fine and 2 years imprisonment.

*Regulation 42* enables the liquidator of a limited liability company that is in the course of being wound up by a creditors' winding up to apply to the Court for an order terminating the winding up. The Court must refuse the application unless it is satisfied that the limited liability company is then able to discharge its liabilities in full as they fall due.

*Regulation 43* provides that a winding up terminates once a creditors' winding up of a limited liability company has commenced or where declaration is made in respect of the limited liability company under the Désastre Law. On the termination of the winding up, any liquidator appointed for the purpose of the winding up ceases to hold office and the limited liability company and all other persons must be in the same position, as if the winding up had not commenced. The termination of a winding up does not affect the validity of anything duly done by any liquidator, manager or other person, or by operation of law, before the termination.

*Regulation 44* requires that, on a winding up, a liability company's property is applied in satisfaction of the limited liability company's liabilities *pari passu*, subject to any enactment as to the order of payment of debts.

*Regulation 45* provides that a person must not act as liquidator of a limited liability company unless the person is an individual and is qualified to act as a liquidator. A person who fails to comply with this requirement commits an offence and is liable to a fine and to 2 years imprisonment. A person is not qualified to act as a liquidator of a limited liability company if the person is a secretary, manager or member of the limited liability company, or a partner or employee of such a person or a person who is disqualified from appointment as a liquidator under any other enactment.

*Regulation 46* makes it an offence for a person to give, or agree or offer to give, a member or creditor of a limited liability company any valuable benefit with a view to securing the person's own appointment or nomination, or to securing or preventing the appointment or nomination of another person, as the limited liability company's liquidator. A person who commits the offence is liable to a fine and 2 years imprisonment.

*Regulation 47* entitles a liquidator in a creditors' winding up to receive remuneration agreed between the liquidator and the liquidation committee or, if there is no liquidation committee, between the liquidator and the creditors or, failing any such agreement, as is fixed by the Court. *Regulation 47* also enables the creditors at a creditors' meeting, by a majority vote, to remove a liquidator, unless the liquidator was appointed by the Court. A liquidator who resigned, is removed or for any other reason vacates office must within 14 days after the resignation, removal or vacation of office, give notice, signed by the liquidator to the registrar and, in a creditors' winding up to the creditors unless the liquidator was removed by the creditors. A liquidator who fails to comply with this requirement commits an offence and is liable to a fine.

*Regulation 48* provides that, for the determination of a question arising in the winding up, or for the Court to exercise any of its powers in relation to the winding up, the limited liability company may apply to the Court in relation to a summary winding up and the liquidator or a contributory or creditor of the limited liability company may apply to the Court in relation to a creditors' winding up.

*Regulation 49* gives the Court the power, on an application made by a creditor or contributory of the limited liability company, to make an order directing the manager or the liquidator to comply with the requirement under these Regulations or any other enactment to deliver a document or give a notice, and with the requirement to, within 14 days after receiving notice in writing, to comply with the requirement in the notice.

*Regulation 50* requires that when a limited liability company is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the limited liability company, or a liquidator of the limited liability company, being a document on or in which the name of the limited liability company appears, must contain a statement that the limited liability company is in liquidation. In the event of failure to comply with this Regulation the limited liability company and every manager of it who is in default commits an offence and is liable to a fine.

*Regulation 51* imposes liability on each present and past member of the limited liability company, if the limited liability company is wound up, to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

*Regulation 52* provides that the winding up of a limited liability company under this Regulation bars the right to take any other proceedings in bankruptcy except the right of a creditor or the limited liability company to apply for a declaration under the Désastre Law.

*Regulation 53* amends Article 8 of the Interpretation (Jersey) Law 1954 by inserting a new sub-paragraph (f) which extends the meaning of "bankruptcy" to include, in the case of a limited liability company, the winding up of a limited liability company by means of a creditors' winding up under the Limited Liability Companies (Winding Up and Dissolution) (Jersey) Regulations 202-.

*Regulation 54* amends paragraph 2 of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999 by inserting after sub-paragraph (4)(c) a new clause (d) which expands the definition of "insolvency services" to include services provided by a person if, by way of business, that person accepts appointment as a liquidator appointed under the Limited Liability Companies (Winding Up and Dissolution) (Jersey) Regulations 202-.

*Regulation 55* provides that these Regulations may be cited as the Limited Liability Companies (Winding Up and Dissolution) (Jersey) Regulations 202- and come into force on the commencement of Article 60 of the Law.



Jersey

## **DRAFT LIMITED LIABILITY COMPANIES (WINDING UP AND DISSOLUTION) (JERSEY) REGULATIONS 202-**

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Jersey

# **DRAFT LIMITED LIABILITY COMPANIES (WINDING UP AND DISSOLUTION) (JERSEY) REGULATIONS 202-**

*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE STATES** make these Regulations under Article 60 of the Limited Liability Companies (Jersey) Law 2018 –

## **PART 1**

### **INTRODUCTION**

#### **1 Interpretation**

In these Regulations –

“approval” means a consent or approval given by the members in accordance with the LLC agreement or Article 16 of the Law;

“contributory” means a person liable to contribute to the assets of a limited liability company under Regulation 51;

“Désastre Law” means the [Bankruptcy \(Désastre\) \(Jersey\) Law 1990](#);

“Law” means the Limited Liability Companies (Jersey) Law 2018;

“liabilities” includes any amount reasonably necessary to be retained for the purpose of providing for any liability or loss which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise;

“manager” includes a member in whom the management of the limited liability company is vested in accordance with Article 21 of the Law;

“statement of solvency” is to be construed in accordance with Regulation 5.

#### **2 Winding up limited liability companies of limited duration**

- (1) A limited liability company may be wound up and dissolved on the expiry of a fixed period of time, or on the occurrence of an event, specified in its LLC agreement if, within 21 days after the expiry of that period or the

- occurrence of that event, the limited liability company gives notice to the registrar stating that the period has expired or that the event has occurred and the date of that expiry or occurrence.
- (2) If notice is not given to the registrar under paragraph (1), any manager, member or creditor of the limited liability company –
    - (a) may, at any time after the expiration of the period of 21 days, give such a notice to the registrar; and
    - (b) must, at the same time, give a copy of the notice to the limited liability company.
  - (3) A limited liability company may be summarily wound up under Part 2 if a statement of solvency –
    - (a) is made in accordance with Regulation 5(1) within 28 days before notice is given in accordance with paragraph (1) and given to the registrar with the notice; or
    - (b) is made in accordance with Regulation 5(1) and given to the registrar within 28 days after a notice is given under paragraph (2).
  - (4) A summary winding up under which assets of the limited liability company are to be distributed commences when the limited liability company complies with paragraph (3).
  - (5) If a statement of solvency is not given to the registrar under paragraph (3), the limited liability company must be wound up under Part 3.
  - (6) In this Regulation, “fixed period of time” means a period of time which is ascertainable without reference to any event which is –
    - (a) contingent; or
    - (b) otherwise uncertain.

### **3 Power for Court to wind up on just and equitable grounds**

- (1) A limited liability company, other than a limited liability company in respect of which a declaration has been made (and not recalled) under the Désastre Law, may be wound up by the Court if the Court is of the opinion that –
  - (a) it is just and equitable to do so; or
  - (b) it is in the public interest to do so.
- (2) An application to the Court to wind up a limited liability company on the ground specified in paragraph (1)(a) may be made by –
  - (a) the limited liability company or one of its managers;
  - (b) the Minister or the Minister for Treasury and Resources following receipt of an Article 9(5) report;
  - (c) the Commission; or
  - (d) a supervisory body as defined in the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#).
- (3) An application to the Court to wind up a limited liability company on the ground specified in paragraph (1)(b) may be made by –
  - (a) the Minister or the Minister for Treasury and Resources following receipt of an Article 9(5) report; or



- (b) the Commission.
- (4) If the Court orders a limited liability company to be wound up under this Regulation it may –
  - (a) appoint a liquidator;
  - (b) direct the manner in which the winding up is to be conducted; and
  - (c) make such orders as it sees fit to ensure that the winding up is conducted in an orderly manner.
- (5) The Act of the Court ordering the winding up of a limited liability company under this Regulation must be –
  - (a) provided to the registrar by the limited liability company within 14 days after it is made; and
  - (b) recorded by the registrar.
- (6) A limited liability company that fails to comply with paragraph (5)(a) commits an offence and is liable to a fine not exceeding level 3 on the standard scale.
- (7) In this Regulation, “Article 9(5) report” means a report provided to the Minister for Treasury and Resources under Article 9(5) of the Taxation (Companies – Economic Substance) (Jersey) Law 2019.

## PART 2

### SUMMARY WINDING UP

#### 4 Application

- (1) This Part applies to the winding up of a limited liability company (other than a limited liability company in respect of which a declaration has been made and not recalled under the Désastre Law) that –
  - (a) has no liabilities;
  - (b) has liabilities that have fallen due or that fall due within 6 months after the commencement of the winding up, that it will be able to discharge in full within 6 months of the commencement of the winding up;
  - (c) has liabilities that will arise more than 6 months after the commencement of the winding up that it will be able to discharge in full as they fall due; or
  - (d) has a combination of the liabilities specified in sub-paragraphs (b) and (c).
- (2) A winding up under this Part is a summary winding up.

#### 5 Procedure

- (1) A statement of solvency must be signed by each manager and state that, having made full enquiry into the limited liability company’s affairs, each manager is satisfied that –
  - (a) the limited liability company has no assets and no liabilities;

- (b) the limited liability company has assets and no liabilities;
  - (c) the limited liability company will be able to discharge its liabilities in full within 6 months after the commencement of the winding up;
  - (d) the limited liability company has liabilities that will fall due more than 6 months after the commencement of the winding up that it will be able to discharge in full as they fall due; or
  - (e) both sub-paragraphs (c) and (d) apply to the limited liability company.
- (2) The limited liability company must –
- (a) within 28 days after a statement of solvency has been signed by the managers, obtain the approval of the members for the limited liability company to be wound up summarily; and
  - (b) within 21 days of obtaining the approval, give notice of it to the registrar together with the statement of solvency.
- (3) A summary winding up under which assets of the limited liability company are to be distributed commences when the limited liability company complies with paragraph (2)(a).
- (4) The registrar must register a statement of solvency given under this Regulation.
- (5) A manager who signs a statement of solvency given to the registrar without having reasonable grounds for making the statement commits an offence and is liable to a fine and 2 years imprisonment.

## **6 Effect on status of limited liability company**

- (1) A limited liability company continues to have capacity after the commencement of the limited liability company's summary winding up until the limited liability company is dissolved.
- (2) However, the limited liability company must not exercise its powers other than for the following purposes –
- (a) realising its assets;
  - (b) discharging its liabilities;
  - (c) distributing its assets in accordance with Regulation 8.

## **7 Liquidator**

- (1) A limited liability company may, on or after the commencement of its summary winding up and with the approval of its members, appoint a person as its liquidator for the purposes of the winding up.
- (2) Subject to the LLC agreement, on the appointment of a liquidator, the managers cease to be authorised to exercise their powers in respect of the limited liability company and those powers may be exercised by the liquidator.
- (3) The liquidator is entitled to receive from the limited liability company, the remuneration –
- (a) agreed between the liquidator and the limited liability company before the appointment;

- (b) subsequently approved by the members of the limited liability company; or
  - (c) subsequently determined by the Court.
- (4) A limited liability company may, with the approval of its members, revoke the appointment of a liquidator.
  - (5) An appointment made in contravention of this Regulation is void.
  - (6) A limited liability company must, within 14 days after the revocation of the appointment of the liquidator, notify the Registrar of the revocation.

## **8 Distribution of assets and dissolution**

- (1) On the registration by the registrar of a statement of solvency stating that the limited liability company has no assets and no liabilities, the limited liability company is dissolved.
- (2) If a statement of solvency states that the limited liability company has assets and no liabilities, the limited liability company must distribute its assets between its members in accordance with their rights or the LLC agreement.
- (3) If a statement of solvency states that the limited liability company has liabilities, the limited liability company –
  - (a) must discharge those liabilities as they become due or within 6 months after the commencement of the winding up; and
  - (b) may distribute its assets between its members in accordance with their rights or the LLC agreement, but only if the managers reasonably believe that the limited liability company is able to discharge any remaining liabilities as they fall due.
- (4) After discharging its liabilities (if any) and distributing its assets, a limited liability company must provide the registrar with a statement, signed by each manager or, if the liquidator discharged the liabilities or distributed the assets, the liquidator, stating that each manager or the liquidator, having made full enquiry into the limited liability company's affairs, is satisfied that the limited liability company has no remaining assets or liabilities.
- (5) The registrar must register the statement provided under paragraph (4) and, on the registration of that statement, the limited liability company is dissolved.
- (6) A manager or liquidator who signs a statement provided to the registrar under paragraph (4) without having reasonable grounds for making the statement commits an offence and is liable to a fine and 2 years imprisonment.

## **9 Effect of insolvency**

- (1) This Regulation applies if, after the commencement of a summary winding up of a limited liability company, a liquidator appointed under Regulation 7(1) or, if no liquidator is appointed, a manager of the limited liability company, forms the opinion that the limited liability company has liabilities that it will be unable to discharge within 6 months after that commencement or, if they fall due after that date, as they fall due.

- (2) The liquidator or manager must record the opinion –
  - (a) in the case of a liquidator, in their records of the administration of the affairs of the limited liability company; or
  - (b) in the case of a manager, in the minutes of a meeting of the managers.
- (3) The liquidator or manager must –
  - (a) give each creditor of the limited liability company notice in writing of a creditors' meeting to be held in Jersey at least 14 days after the service of the notice and not more than 28 days after the opinion was recorded under paragraph (2);
  - (b) give a copy of the notice to the registrar; and
  - (c) publish the notice in the Jersey Gazette at least 10 days before the day on which the meeting is to occur.
- (4) The notice must contain the name of a person nominated as liquidator of the limited liability company for a creditors' winding up.
- (5) At any time before the meeting, the liquidator or manager must furnish any creditor, free of charge, with such information concerning the affairs of the limited liability company as the creditor may reasonably request.
- (6) The meeting must be conducted by –
  - (a) the liquidator;
  - (b) if no liquidator is appointed, a manager nominated by the managers; or
  - (c) if the limited liability company has no managers, a member nominated by its members.
- (7) At the meeting, the liquidator or a manager must provide a statement, verified by affidavit by the liquidator or the manager, as to the affairs of the limited liability company.
- (8) On and from the day of the meeting –
  - (a) the winding up of the limited liability company is taken to be a creditors' winding up under Part 3; and
  - (b) for the purpose of Regulation 17, the meeting is taken to be a creditors' meeting held in accordance with Regulation 16.
- (9) A liquidator or manager who, without reasonable excuse, fails to comply with any obligation under this Regulation commits an offence and is liable to a fine and 2 years imprisonment.

## **10 Termination of summary winding up**

- (1) A limited liability company may approve the termination of its winding up if –
  - (a) its summary winding up has commenced;
  - (b) it has not received any contribution from a contributory under Regulation 51;
  - (c) it has not, for the purposes of the winding up, distributed any of its assets between its members; and

- (d) it has discharged its liabilities.
- (2) The winding up of a limited liability company is terminated when the limited liability company provides the registrar with a certificate signed by a manager of the limited liability company stating that –
  - (a) the termination of the winding up has been approved by the members of the limited liability company;
  - (b) the limited liability company has not received any contribution from a contributory under Regulation 51;
  - (c) the limited liability company has not, for the purposes of the winding up, distributed its assets between its members; and
  - (d) the limited liability company has discharged its liabilities.
- (3) On the termination of the winding up of a limited liability company –
  - (a) the appointment of its liquidator is taken to be revoked; and
  - (b) subject to paragraph (4), the limited liability company and all other persons are taken to be in the same position as they would be if the winding up had not commenced.
- (4) The termination of a winding up does not affect the validity of anything duly done by any liquidator, manager or other person, or by operation of law, before its termination.
- (5) A manager who signs a certificate provided to the registrar under paragraph (2) without having reasonable grounds for believing that the statements in it are true commits an offence and is liable to a fine and 2 years imprisonment.

## **11 Declaration under Désastre Law**

- (1) The winding up of a limited liability company is terminated if –
  - (a) a summary winding up of the limited liability company has commenced; and
  - (b) a declaration is made in respect of the limited liability company under the Désastre Law.
- (2) On the termination of the winding up of a limited liability company –
  - (a) the appointment of its liquidator is taken to be revoked; and
  - (b) subject to paragraph (3), the limited liability company and all other persons are taken to be in the same position as they would be if the winding up had not commenced.
- (3) The termination of a winding up does not affect the validity of anything duly done by any liquidator, manager or other person, or by operation of law, before its termination.

## PART 3

### CREDITORS' WINDING UP

#### 12 Application

- (1) This Part applies to the winding up of a limited liability company otherwise than under Parts 2 or 4.
- (2) A winding up under this Part is a creditors' winding up.

#### 13 Procedure

A limited liability company, other than a limited liability company in respect of which a declaration has been made (and not recalled) under the Désastre Law, may, with the approval of the members of the limited liability company, be wound up under this Part.

#### 14 Notice of winding up

- (1) A limited liability company must, if the members of a limited liability company approve the winding up of the limited liability company under this Part –
  - (a) publish a notice in the Jersey Gazette; and
  - (b) provide notice to the registrar.
- (2) The notice must be published, and provided to the registrar, within 14 days after the day on which the winding up was approved.
- (3) A limited liability company that fails to comply with paragraph (1) or (2) commits an offence and is liable to a fine not exceeding level 3 on the standard scale.

#### 15 Commencement and effects of creditors' winding up

- (1) A creditors' winding up commences when a creditors' winding up is approved by the members of the limited liability company.
- (2) A limited liability company continues to have capacity after the commencement of the limited liability company's creditors' winding up until the limited liability company is dissolved.
- (3) However, the limited liability company's powers must not exercise its powers other than for the purpose of its beneficial winding up.
- (4) A transfer of any LLC interests not being a transfer made to or with the sanction of the liquidator, or an alteration in the status of the limited liability company's members, as members, is void if it is made after the commencement of a creditors' winding up of a limited liability company.
- (5) Paragraph (4) does not avoid a transfer of LLC interests made pursuant to a power under Part 7 of the [Security Interests \(Jersey\) Law 2012](#) even if it is not made to or with the sanction of the liquidator.
- (6) After the commencement of a creditors' winding up of a limited liability company, no action is to be taken or proceeded with against the limited

liability company other than by leave of the Court and subject to such terms as the Court may impose.

## **16 Meeting of creditors in creditors' winding up**

- (1) A limited liability company in a creditors' winding up must –
  - (a) give notice to its creditors of a meeting to be held in Jersey;
  - (b) nominate a person to be liquidator for the purposes of a creditors' winding up; and
  - (c) during the period before the meeting, provide, free of charge, any information concerning the affairs of the limited liability company as the creditors may reasonably require.
- (2) The notice must be given –
  - (a) at least 14 days before the day on which the meeting is to be held; and
  - (b) by advertisement in the Jersey Gazette at least 10 days before the day of the meeting.
- (3) If a limited liability company fails, without reasonable excuse, to comply with paragraph (1) or (2), the limited liability company commits an offence and is liable to a fine.
- (4) The managers of a limited liability company in a creditors' winding up must –
  - (a) prepare a statement as to the affairs of the limited liability company, verified by affidavit by one or more of the managers;
  - (b) lay that statement before the creditors' meeting; and
  - (c) appoint a manager to preside at that meeting.
- (5) If a manager fails, without reasonable excuse, to comply with paragraph (4), the manager commits an offence and is liable to a fine.
- (6) The manager appointed under paragraph (4)(c) must attend the meeting and preside over it.
- (7) If a manager appointed under paragraph (4)(c) fails, without reasonable excuse, to comply with paragraph (6), the manager commits an offence and is liable to a fine.
- (8) The creditors may, at the creditors' meeting, nominate a person to be the liquidator for the purpose of the creditors' winding up.

## **17 Appointment of liquidator**

- (1) If a creditors' meeting is called in accordance with Regulation 9(3), the person nominated to be liquidator in the notice calling the meeting is taken, for the purposes of this Regulation, to have been nominated as the liquidator by the limited liability company.
- (2) The following person is appointed as the liquidator with effect from the conclusion of the creditors' meeting –
  - (a) the person nominated to be the liquidator by the creditors at the creditors' meeting; or

- (b) if no person is nominated by the creditors at the creditors' meeting, the person nominated by the limited liability company.
- (3) If different persons are nominated, a manager, member or creditor of the limited liability company may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order either –
  - (a) directing that the person nominated as liquidator by the limited liability company be liquidator instead of or jointly with the person nominated by the creditors; or
  - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.
- (4) A liquidator appointed under this Regulation must, within 14 days after the appointment, give notice of the appointment signed by the liquidator to the registrar and to the creditors.
- (5) A liquidator who fails to comply with paragraph (4) commits an offence and is liable to a fine not exceeding level 3 on the standard scale.

## **18 Appointment of liquidation committee**

- (1) The creditors at a creditors' meeting may appoint a liquidation committee comprising no more than 5 persons to exercise the functions conferred on it by or under these Regulations.
- (2) If a liquidation committee is appointed, the limited liability company may, with the approval of its members, appoint no more than 5 persons to act as members of the committee.
- (3) The creditors may resolve that all or any of the persons appointed by the limited liability company under paragraph (2) must not act as members of the committee and if the creditors so resolve –
  - (a) the persons named in the resolution must not, unless the Court otherwise directs, act as members of the liquidation committee; and
  - (b) on an application to the Court made by the creditors or the members, the Court may appoint other persons to act as members of the liquidation committee in place of the persons named in the resolution.

## **19 No liquidator appointed**

- (1) This Regulation applies where a creditors' winding up has commenced but no liquidator has been appointed.
- (2) During the period before the appointment of a liquidator, the powers of the managers must not be exercised except –
  - (a) with the sanction of the Court;
  - (b) to secure compliance with Regulation 16; or
  - (c) to protect the assets of the limited liability company.
- (3) If a manager, without reasonable excuse, fails to comply with this Regulation, the manager commits an offence and is liable to a fine and 6 months imprisonment.



## 20 Cost of creditors' winding up

All costs, charges and expenses properly incurred in a creditors' winding up, including the remuneration of the liquidator (and any expenses of a liquidator under Article 15(6)(a) of the [Dormant Bank Accounts \(Jersey\) Law 2017](#)), are payable out of the assets of the limited liability company in priority to all other claims.

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

- (1) Subject to paragraph (2) and Regulation 20, in a creditors' winding up, the same rules prevail with respect to persons against whom a declaration has been made under the *Désastre* Law with the substitution of references to the liquidator and to the winding up respectively for references to the Viscount and to the *désastre* with regard to the following –
  - (a) the respective rights of secured and unsecured creditors;
  - (b) debts provable;
  - (c) the time and manner of proving any debt;
  - (d) the admission and rejection of the proof of any debt;
  - (e) the setting off of any debts;
  - (f) the order of payment of debts.
- (2) Any surplus remaining after payment of the debts proved in the winding up, before being applied for any other purpose, must be applied in paying interest on those debts that bore interest before the commencement of the winding up –
  - (a) in respect of the period during which they have been outstanding since the commencement of the winding up; and
  - (b) at the rate of interest that applied in respect of those debts before the commencement of the winding up.

## 22 Arrangement when binding on creditors

- (1) An arrangement entered into between a limited liability company and its creditors immediately before the commencement of, or in the course of, a creditors' winding up, is binding on –
  - (a) the limited liability company, if approved by the members of the limited liability company; and
  - (b) the creditors, if resolved by –
    - (i) at least 75% of the creditors who vote on the resolution (either in person or by proxy), and
    - (ii) at least 75% of the value of the votes of the creditors who vote on the resolution (either in person or by proxy).
- (2) A creditor or contributor may, no later than 3 weeks before the completion of the arrangement, appeal to the Court to amend or vary the arrangement.
- (3) On appeal, the Court may, as it thinks just, amend, vary or confirm the arrangement.

## **23 Meetings of limited liability company and creditors**

- (1) If a creditors' winding up continues for more than 12 months, the liquidator must –
  - (a) call a meeting of the members of the limited liability company and a meeting of the creditors to be held within 3 months after each one year anniversary of the commencement of the winding up, or within such longer period approved by the Commission; and
  - (b) lay before the meetings an account of the liquidator's acts and dealings and of the conduct of the winding up during the preceding year.
- (2) If the liquidator fails to comply with this Regulation, the liquidator commits an offence and is liable to a fine not exceeding level 3 on the standard scale.

## **24 Final meeting and dissolution**

- (1) The liquidator must, as soon as practicable after the affairs of a limited liability company in a creditors' winding up are wound up –
  - (a) prepare an account of the winding up, including details of how it has been conducted and how the limited liability company's property has been disposed of; and
  - (b) call a meeting of the members of the limited liability company and a meeting of the creditors, giving 21 days' notice of each meeting in writing accompanied by a copy of the account of the winding up, for the purpose of laying the account before the meetings and giving an explanation of it.
- (2) The liquidator must, within 7 days after the later meeting, provide a return to the registrar –
  - (a) stating that the meetings were held, including the dates on which they were held; or
  - (b) if a quorum was not present at either meeting, stating that the meeting was called and that no quorum was present.
- (3) The registrar must, on receiving a return, register the return, and on the registration of that return, the limited liability company is dissolved.

## **25 Procedure at creditors' meeting**

- (1) A creditor who has been given notice of a creditors' meeting is entitled to vote at the meeting (either in person or by proxy) and any adjournment of it.
- (2) The value of a creditor's vote is to be calculated according to the amount of the creditor's debt at the date of the commencement of the winding up.
- (3) A debt for an unliquidated amount or a debt the value of which has not been ascertained does not give a creditor the right to vote at a creditors' meeting, however, the chair of the meeting may assign an estimated minimum value to the debt that entitles the creditor to vote.

- (4) For a resolution to pass at a creditors' meeting, it must be supported by creditors the values of whose votes exceed half the value of the votes of the creditors who vote on the resolution (either in person or by proxy).
- (5) A creditors' meeting is not competent to act unless there is present (either in person or by proxy) at least one creditor entitled to vote.

## **26 Powers and duties of liquidator**

- (1) The liquidator in a creditors' winding up may, with the sanction of the Court or the liquidation committee (or, if there is no such committee, the creditors) –
  - (a) pay a class of creditors in full; or
  - (b) compromise any claim by or against the limited liability company.
- (2) The liquidator may, without sanction, exercise any other power of the limited liability company as may be required for its beneficial winding up.
- (3) The liquidator may –
  - (a) settle a list of contributories (and the list of contributories is taken to be evidence that the persons named in it are contributories);
  - (b) make calls; and
  - (c) summon meetings of the limited liability company for the purpose of obtaining the approval of its members or for any other purpose the liquidator thinks appropriate.
- (4) The liquidator must pay the limited liability company's debts and adjust the rights of the contributories among themselves.
- (5) The appointment or nomination of more than one person as liquidator must declare whether any act to be done is to be done by all or any one or more of them, and in default, any such act may be done by 2 or more of them.

## **27 Power to disclaim onerous property**

- (1) In this Regulation, "onerous property" means any of the following that is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act, and includes an unprofitable contract –
  - (a) moveable property;
  - (b) a contract lease;
  - (c) other immovable property if it is situated outside Jersey.
- (2) The liquidator in a creditors' winding up may, within 6 months after the commencement of the winding up, disclaim on behalf of the limited liability company any onerous property of the limited liability company by the giving of notice, signed by the liquidator and referring to this Regulation and Regulation 29, to each person who is interested in or under any liability in respect of the property disclaimed..
- (3) A disclaimer under this Regulation must –
  - (a) operate in order to determine, as from the date of the disclaimer, the rights, interests and liabilities of the limited liability company in or in respect of the property disclaimed; and

- (b) discharge the limited liability company from all liability in respect of the property as of the date of the commencement of the creditors' winding up.
- (4) A disclaimer under this Regulation must not, except so far as is necessary for the purpose of releasing the limited liability company from liability, affect the rights or liabilities of any other person.
- (5) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Regulation is taken to be a creditor of the limited liability company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.
- (6) The effect of an order under Regulation 29 must be taken into account in assessing the extent of loss or damage sustained by a person in consequence of the disclaimer.

## **28 Disclaimer of contract leases**

- (1) The disclaimer of a contract lease does not take effect unless a copy of its disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the limited liability company as a hypothecary creditor or an under-lessee and either –
  - (a) no application under Regulation 29 is made with respect to the contract lease before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served; or
  - (b) where such an application has been made, the Court directs that the disclaimer is to have effect.
- (2) Where the Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Regulation 29, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks appropriate.

## **29 Powers of Court in respect of disclaimed property**

- (1) This Regulation applies where the liquidator of a limited liability company has disclaimed property under Regulation 27.
- (2) An application may be made to the Court under this Regulation by –
  - (a) any person who claims an interest in the disclaimed property (including, in the case of the disclaimer of a contract lease, a person claiming under the limited liability company as a hypothecary creditor or an under-lessee); or
  - (b) any person who is under any liability in respect of the disclaimed property (including a guarantor), not being a liability discharged by the disclaimer.
- (3) The Court may, on an application under this Regulation, make an order on such terms as it thinks appropriate for the vesting of the disclaimed property in, or for its delivery to –
  - (a) a person entitled to it or a trustee for such a person; or
  - (b) a person subject to a liability mentioned in paragraph (2)(b) or a trustee for such a person, but only if it appears to the Court that it

would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

### **30 Unenforceability of liens on records**

- (1) This Regulation does not apply to a lien on a document that gives a title to property and is held as such.
- (2) In a creditors' winding up, a lien or other right to retain possession of a record of a limited liability company is unenforceable to the extent that its enforcement would deny possession of the record to the liquidator.

### **31 Appointment or removal of liquidator by the Court**

- (1) The Court may appoint a liquidator if for any reason there is no liquidator acting in a creditors' winding up.
- (2) The Court may, on reason being given, remove a liquidator in a creditors' winding up and may appoint another.

## **PART 4**

### **TRANSACTIONS AT AN UNDERVALUE AND PREFERENCES**

### **32 Interpretation**

- (1) In this Part –
  - (a) a manager of a limited liability company, any associate of such a manager and any associate of the limited liability company are connected with the limited liability company;
  - (b) a person is an associate of an individual if the person is the individual's husband, wife or civil partner, or is a relative, or the husband, wife or civil partner of a relative, of the individual or of the individual's husband, wife or civil partner;
  - (c) a person is an associate of any person with whom the person is in partnership, and of the husband, wife or civil partner or relative of any individual with whom the person is in partnership;
  - (d) a person is an associate of any employee or employer of the person;
  - (e) a person who is a trustee of a trust is an associate of another person if –
    - (i) the beneficiaries of the trust include that other person or an associate of that other person, or
    - (ii) the terms of the trust confer a power that may be exercised for the benefit of that other person or an associate of that other person;
  - (f) a limited liability company is an associate of another limited liability company if –

- (i) the same person has control of both limited liability companies, or a person has control of one limited liability company and either –
    - (a) persons who are that person's associates have control of the other limited liability company; or
    - (b) that person and persons who are that person's associates have control of the other limited liability company, or
  - (ii) each limited liability company is controlled by a group of 2 or more persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a person in either group as replaced by that person's associate;
  - (g) a limited liability company is an associate of another person if that person has control of the limited liability company or if that person and persons who are that person's associates together have control of the limited liability company; and
  - (h) a provision that a person is an associate of another person is taken to mean that they are associates of each other.
- (2) In this Regulation –
- (a) references to a husband, wife or civil partner include a former husband, wife or civil partner and a reputed husband, wife or civil partner;
  - (b) a person is a relative of an individual if the person is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, for which purpose –
    - (i) any relationship of the half blood is to be treated as a relationship of the whole blood and the stepchild or adopted child of a person as the person's child, and
    - (ii) an illegitimate child is to be treated as the legitimate child of the child's mother and reputed father;
  - (c) a manager or secretary of a limited liability company is taken to be employed by the limited liability company;
  - (d) a person is taken as having control of a limited liability company if –
    - (i) the managers of the limited liability company or of another limited liability company that has control of it (or any of them) are accustomed to act in accordance with the person's directions or instructions, or
    - (ii) the person is entitled to exercise, or to control the exercise of, more than one third of the voting power of the members of the limited liability company or of another limited liability company which has control of it;
  - (e) if 2 or more persons together satisfy sub-paragraph (d)(i) or (ii), they are taken as having control of the company; and
  - (f) a reference to a limited liability company includes a limited liability company established outside Jersey.

### **33 Transactions at an undervalue**

- (1) If a limited liability company has at a relevant time entered into a transaction with a person at an undervalue the Court may, on the application of the liquidator in a creditors' winding up, make such an order as the Court thinks appropriate for restoring the position to what it would have been if the limited liability company had not entered into the transaction.
- (2) The Court must not make an order under paragraph (1) if it is satisfied –
  - (a) that the limited liability company entered into the transaction in good faith for the purpose of carrying on its business; and
  - (b) that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the limited liability company.
- (3) Without limiting paragraph (1) and subject to paragraph (5), an order made under paragraph (1) may do all or any of the following –
  - (a) require property transferred as part of the transaction to be vested in the limited liability company;
  - (b) require property to be so vested if it represents in a person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) security given by the limited liability company;
  - (d) require a person to pay in respect of a benefit received by the person from the limited liability company such sum to the limited liability company as the Court directs;
  - (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) under the transaction to be under such new or revived obligation to that person as the Court thinks appropriate;
  - (f) provide –
    - (i) for security to be provided for the discharge of an obligation imposed by or arising under the order,
    - (ii) for the obligation to be secured on any property, and
    - (iii) for the security to have the same priority as the security released or discharged (in whole or in part) under the transaction;
  - (g) provide for the extent to which a person whose property is vested in the limited liability company by the order or on whom an obligation is imposed by the order, is to be able to prove in the winding up of the limited liability company for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction.
- (4) Subject to paragraph (5), an order made under paragraph (1) may affect the property of or impose an obligation on any person, whether or not that person is the person with whom the limited liability company entered into the transaction.
- (5) An order made under paragraph (1) must not –

- (a) prejudice an interest in property that was acquired from a person other than the limited liability company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or
  - (b) require a person who in good faith and for value received a benefit from the transaction to pay a sum to the limited liability company, except where the person was a party to the transaction.
- (6) In considering whether a person has acted in good faith, the Court may take into consideration –
- (a) whether the person was aware that the limited liability company –
    - (i) had entered into a transaction at an undervalue, and
    - (ii) was insolvent or would, as a likely result of entering into the transaction, become insolvent; and
  - (b) whether the person was an associate of, or was connected with, either the limited liability company or the person with whom the limited liability company had entered into the transaction.
- (7) For the purpose of this Regulation, a limited liability company enters into a transaction with a person at an undervalue if –
- (a) it makes a gift to that person;
  - (b) it enters into a transaction with that person –
    - (i) on terms for which there is no *cause*, or
    - (ii) for a *cause* the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the *cause* provided by the limited liability company.
- (8) In this Regulation, “relevant time” means –
- (a) the period of 5 years immediately preceding the date of commencement of the winding up if –
    - (i) the limited liability company was insolvent when it entered into the transaction, or
    - (ii) the limited liability company became insolvent as a result of the transaction; or
  - (b) if the transaction at an undervalue was entered into with a person connected with the limited liability company or with an associate of the limited liability company, the period of 5 years immediately preceding the date of commencement of the winding up unless it is proved that –
    - (i) the limited liability company was not insolvent when it entered into the transaction, and
    - (ii) the limited liability company did not become insolvent as a result of the transaction.

### 34 Giving of preferences

- (1) If a limited liability company has at a relevant time given a preference to a person the Court may, on the application of the liquidator in a creditors' winding up, make such an order as the Court thinks appropriate for



- restoring the position to what it would have been if the preference had not been given.
- (2) Without limiting paragraph (1) and subject to paragraph (4), an order made under paragraph (1) may do any of the following –
    - (a) require property transferred in connection with the giving of the preference to be vested in the limited liability company;
    - (b) require property to be vested in the limited liability company if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
    - (c) release or discharge (in whole or in part) security given by the limited liability company;
    - (d) require a person to pay in respect of a benefit received by the person from the limited liability company such sum to the limited liability company as the Court directs;
    - (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) by the giving of the preference to be under such new or revived obligation to that person as the Court thinks appropriate;
    - (f) provide –
      - (i) for security to be provided for the discharge of any obligation imposed by or arising under the order,
      - (ii) for such an obligation to be secured on any property, and
      - (iii) for the security to have the same priority as the security released or discharged (in whole or in part) by the giving of the preference;
    - (g) provide for the extent to which a person, whose property is vested by the order in the limited liability company or on whom obligations are imposed by the order, is able to prove in the winding up of the limited liability company for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by the giving of the preference.
  - (3) Subject to paragraph (4), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person whether or not that person is the person to whom the preference was given.
  - (4) An order made under paragraph (1) must not –
    - (a) prejudice an interest in property that was acquired from a person other than the limited liability company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or
    - (b) require a person who in good faith and for value received a benefit from the preference to pay a sum to the limited liability company, except where the payment is in respect of a preference given to that person at a time when that person was a creditor of the limited liability company.
  - (5) In considering whether a person has acted in good faith, the Court may consider –

- (a) whether the person had notice –
    - (i) of the circumstances that amounted to the giving of the preference by the limited liability company, or
    - (ii) of the fact that the limited liability company was insolvent or would, as a likely result of giving the preference, become insolvent; and
  - (b) whether the person was an associate of, or was connected with, either the limited liability company or the person to whom the limited liability company gave the preference.
- (6) The Court must not make an order under this Regulation in respect of a preference given to a person unless the limited liability company, when giving the preference, was influenced in deciding to give the preference by a desire to put the person into a position which, in the event of the winding up of the limited liability company, would be better than the position in which the person would be if the preference had not been given.
- (7) A limited liability company that gave a preference to a person who was, at the time the preference was given, an associate of, or connected with, the limited liability company (other than by reason only of being an employee of the limited liability company) is taken, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire mentioned in paragraph (6).
- (8) In this Regulation, “relevant time” means –
- (a) the period of 12 months immediately preceding the date of commencement of the winding up if –
    - (i) the limited liability company was insolvent when it gave the preference, or
    - (ii) the limited liability company became insolvent as a result of giving the preference; or
  - (b) if the preference was given to a person connected with, or to an associate of, the limited liability company, the period of 12 months immediately preceding the date of commencement of the winding up unless it is proved that –
    - (i) the limited liability company was not insolvent when it gave the preference, and
    - (ii) the limited liability company did not become insolvent as a result of giving the preference.
- (9) For the purpose of this Regulation, a limited liability company gives a preference to a person if –
- (a) the person is a creditor of the limited liability company or a surety or guarantor for a debt or other liability of the limited liability company; and
  - (b) the limited liability company does anything or suffers anything to be done that has the effect of putting the person into a position which, in the event of the winding up of the limited liability company, is better than the position the person would have been in if that thing had not been done.

### **35 Responsibility for fraudulent or wrongful trading**

- (1) In this Regulation, “relevant person” means a person who, at a time before the date of commencement of a creditors’ winding up of a limited liability company –
  - (a) was a manager or former manager of the limited liability company; and
  - (b) knew that there was no reasonable prospect that, or on the facts known to the person was reckless as to whether, the limited liability company would avoid a creditors’ winding up or the making of a declaration under the Désastre Law.
- (2) The Court may, on the application of the liquidator, order that a relevant person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the limited liability company arising after the time referred to in paragraph (1), unless the relevant person took reasonable steps to minimise the potential loss to the limited liability company’s creditors.
- (3) If, in the course of a creditors’ winding up, it appears that any business of the limited liability company has been carried on with intent to defraud creditors of the limited liability company or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the liquidator, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the limited liability company’s assets as the Court thinks appropriate.
- (4) On the hearing of an application under this Regulation, the liquidator may give evidence or call witnesses.
- (5) The Court may –
  - (a) give such further directions as it thinks appropriate for giving effect to the order; and
  - (b) in relation to a person who is a creditor of the limited liability company, direct that the whole or part of a debt owed by the limited liability company to that person (including any accrued interest on the debt) be given priority over all other debts (including accrued interest on those debts) owed by the limited liability company.
- (6) This Regulation has effect despite any criminal liability of the relevant person in relation to matters on the grounds of which an order under paragraph (3) is made.

### **36 Extortionate credit transactions**

- (1) This Regulation applies in a creditors’ winding up where the limited liability company is, or has been, a party to a transaction for, or involving, the provision of credit to the limited liability company.
- (2) The Court may, on the application of the liquidator, make an order with respect to the transaction if the transaction –
  - (a) is extortionate; and
  - (b) was entered into in the period of 3 years ending with the date of commencement of the creditors’ winding up.

- (3) For the purposes of this Regulation, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –
  - (a) the terms of the transaction are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
  - (b) the transaction otherwise grossly contravened ordinary principles of fair dealing.
- (4) Unless otherwise proved, a transaction in relation to which an application is made under this Regulation is taken to be extortionate.
- (5) An order under this Regulation with respect to a transaction may contain any of the following provisions –
  - (a) provision setting aside the whole or part of an obligation created by the transaction;
  - (b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;
  - (c) provision requiring a person who is or was a party to the transaction to pay to the liquidator sums paid to that person, by virtue of the transaction, by the limited liability company;
  - (d) provision requiring a person to surrender to the liquidator property held by the person as security for the purposes of the transaction;
  - (e) provision directing accounts to be taken between any persons.

### **37 Delivery and seizure of property**

- (1) Where a person possesses or controls property or records to which a limited liability company appears in a creditors' winding up to be entitled, the Court may direct that person to, within a period determined by the Court, pay, deliver, convey, surrender or transfer the property or records to the liquidator.
- (2) If the liquidator seizes or disposes of property that is not property of the limited liability company and at that time the liquidator believes, and has reasonable grounds for believing, that the liquidator is entitled (whether or not in pursuance of an order of the Court) to seize or dispose of that property, the liquidator –
  - (a) is not liable to any person in respect of loss or damage resulting from the seizure or disposal except to the extent that the loss or damage is caused by the negligence of the liquidator; and
  - (b) has a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.

### **38 Approvals given at adjourned meetings**

Any approval given at an adjourned meeting of a limited liability company's creditors is to be treated as having been given on the date on which it was in fact given, and not as having been given on any earlier date.

### **39 Duty to co-operate with liquidator**

- (1) This Regulation applies to the following persons in relation to a limited liability company being wound up in a creditors' winding up –
  - (a) a person who is, or has been, a member or manager of or the secretary to the limited liability company;
  - (b) a person who has taken part in the formation of the limited liability company during the relevant period;
  - (c) a person who has been employed by the limited liability company during the relevant period and who is, in the liquidator's opinion, capable of giving information required by the liquidator; or
  - (d) a person who has been an officer of, or employed by, a body corporate or limited liability company that was secretary to the limited liability company during the relevant period.
- (2) A person to whom this Regulation applies must –
  - (a) provide information about the limited liability company (including its promotion, formation, business, dealings, affairs or property) that is reasonably required by the liquidator at any time after the commencement of the winding up;
  - (b) after receiving reasonable notice in writing, attend on the liquidator at reasonable times; and
  - (c) notify the liquidator in writing of any change of the person's address, employment or name.
- (3) A person who, without reasonable excuse, fails to comply with paragraph (2) commits an offence and is liable to a fine and 6 months imprisonment.
- (4) In this Regulation –

“employed” includes employed under a contract for services (*contrat de louage d'ouvrage*);

“relevant period” means the period of time occurring within 12 months before the date of the commencement of the winding up of the limited liability company.

### **40 Liquidator to report possible misconduct**

- (1) This Regulation applies if it appears to the liquidator or to the Court in a creditors' winding up that –
  - (a) the limited liability company being wound up has committed a criminal offence;
  - (b) a person has committed a criminal offence in relation to the limited liability company being wound up; or
  - (c) the conduct of a manager of the limited liability company being wound up (whether or not the conduct relates to the limited liability company being wound up) justifies applying for a disqualification order against the manager.
- (2) The liquidator must –
  - (a) report the matter to the Attorney General as soon as practicable; and

- (b) give information to the Attorney General with information and give the Attorney General access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question), as the Attorney General requires.
- (3) If no report has been made by the liquidator to the Attorney General under paragraph (2), the Court may (on the application of a person interested in the winding up or of its own motion) direct the liquidator to make a report.
- (4) Where a report is made to the Attorney General, the Attorney General may refer the matter to the Minister or the Commission for further enquiry.
- (5) If referred by the Attorney General, the Minister or the Commission –
  - (a) must investigate the matter; and
  - (b) for the purpose of the investigation, may exercise any of the powers that are exercisable by an inspector appointed to investigate a company's affairs under Article 128 of the [Companies \(Jersey\) Law 1991](#).

#### **41 Production of records and evidence to Minister or Commission**

- (1) For the purpose of an investigation by the Minister or the Commission under Regulation 40, if the Minister or the Commission consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require the person –
  - (a) to produce and make available to them all records in the person's custody or power relating to that matter;
  - (b) at reasonable times and on reasonable notice, to attend before them; and
  - (c) otherwise, to give them all assistance in connection with the investigation which the person is reasonably able to give,and it is that person's duty to comply with the requirement.
- (2) The Minister or the Commission may for the purposes of the investigation examine on oath any person mentioned in paragraph (1), and may administer an oath accordingly.
- (3) A person commits an offence and is liable to a fine and 2 years imprisonment if the person, being required under paragraph (1) to answer any question which is put to the person by the Minister or the Commission –
  - (a) knowingly or recklessly makes a statement which is false, misleading or deceptive in a material particular; or
  - (b) knowingly or recklessly withholds any information the omission of which makes the information which is furnished misleading or deceptive in a material particular.
- (4) An answer given by a person to a question put to the person in exercise of the powers conferred by this Regulation may not be used in evidence against the person in any criminal proceedings except –

- (a) proceedings in which the person is charged with knowingly or recklessly making a false statement in the course of being examined on oath under paragraph (2);
  - (b) proceedings under paragraph (3).
- (5) If criminal proceedings are instituted by the Attorney General following a report or reference, the following persons (other than the defendant) must give the Attorney General any assistance that the person is reasonably able to give in connection with the proceedings –
  - (a) the liquidator in the winding up of the limited liability company;
  - (b) the manager of the limited liability company (including former managers);
  - (c) any agent of the limited liability company (including former agents), including a banker, advocate or solicitor and any person employed by the limited liability company as auditor.
- (6) If a person fails to give assistance as required by paragraph (5), the Court may, on the application of the Attorney General –
  - (a) direct the person to comply with that paragraph; and
  - (b) if the application is made with respect to a liquidator, direct that the costs be borne by the liquidator personally unless it appears that the failure to comply was due to the fact that the liquidator did not have sufficient assets of the limited liability company in the liquidator's hands to enable the liquidator to do so.

## **42 Termination of creditors' winding up**

- (1) The liquidator of a limited liability company that is in the course of being wound up by a creditors' winding up may apply to the Court for an order terminating the winding up, and the members may approve the making of that application.
- (2) The Court must refuse the application unless it is satisfied that the limited liability company is then able to discharge its liabilities in full as they fall due.
- (3) In considering the application the Court must have regard to the interests of the creditors of the limited liability company.
- (4) If the application for winding up the limited liability company was made by the Commission under Regulation 3(2) or (3), the Court must also have regard to the views of the Commission.
- (5) If the Court makes an order under paragraph (1) –
  - (a) it may make such order as to costs as it thinks appropriate; and
  - (b) on the termination of the creditors' winding up, the liquidator ceases to hold office.
- (6) The termination of a creditors' winding up under paragraph (1) does not prejudice the validity of any thing duly done by any liquidator, manager or other person, or by operation of law, before its termination.

**43 Declaration under Désastre Law**

- (1) A winding up terminates if –
  - (a) a creditors' winding up of a limited liability company has commenced; and
  - (b) a declaration is made in respect of the limited liability company under the Désastre Law.
- (2) On the termination of the winding up under paragraph (1) –
  - (a) any liquidator appointed for the purpose of the winding up ceases to hold office; and
  - (b) the limited liability company and all other persons must be in the same position, subject to paragraph (3), as if the winding up had not commenced.
- (3) The termination of a winding up under paragraph (1) does not affect the validity of any thing duly done by any liquidator, manager or other person, or by operation of law, before the termination.

**44 Distribution of limited liability company's property**

- (1) A limited liability company's property must, on a winding up, be applied in satisfaction of the limited liability company's liabilities *pari passu* subject to any enactment as to the order of payment of debts.
- (2) Unless otherwise provided by the LLC agreement, any remaining property of the limited liability company must be distributed among the members according to their rights and interests in the limited liability company.
- (3) Despite paragraphs (1) and (2) and Regulation 21, the liquidator, or, with the sanction of the Court under Regulation 19(2), the manager of a limited liability company may distribute the assets of the limited liability company to its members, proportional to their rights and interests or as otherwise provided by the LLC agreement, if –
  - (a) the liquidator or manager is satisfied that the assets will be sufficient to ensure that –
    - (i) the costs, charges and expenses properly incurred in the winding up may be paid, and
    - (ii) the claims of all creditors (including any interest owing on a debt) may be satisfied in full; and
  - (b) the distributed assets will not be required to pay or satisfy those costs, charges, expenses and claims.

**PART 5****LIQUIDATORS****45 Qualifications of liquidator**

- (1) A person must not act as a liquidator of a limited liability company unless the person –



- (a) is an individual; and
  - (b) is qualified to act as a liquidator in accordance with this Regulation.
- (2) A person who fails to comply with paragraph (1) commits an offence and is liable to a fine and 2 years imprisonment.
- (3) A person is qualified to act as a liquidator of a limited liability company if the person is a member of –
  - (a) the Institute of Chartered Accountants in England and Wales;
  - (b) the Institute of Chartered Accountants of Scotland;
  - (c) the Association of Chartered Certified Accountants; or
  - (d) the Institute of Chartered Accountants in Ireland.
- (4) The Viscount is by virtue of the Viscount's office qualified to act as a liquidator.
- (5) A person is not qualified to act as a liquidator of a limited liability company if the person is –
  - (a) a secretary, manager or member of the limited liability company, or a partner or employee of such a person; or
  - (b) a person who is disqualified from appointment as a liquidator under any other enactment.
- (6) If an individual acting as a liquidator of a limited liability company ceases to be qualified to act as a liquidator, the individual must –
  - (a) as soon as practicable notify the limited liability company; and
  - (b) immediately cease acting as a liquidator.

#### **46 Corrupt inducement affecting appointment of liquidator**

A person who gives, or agrees or offers to give, a member or creditor of a limited liability company any valuable benefit with a view to securing the person's own appointment or nomination, or to securing or preventing the appointment or nomination of another person, as the limited liability company's liquidator, commits an offence and is liable to a fine and 2 years imprisonment..

#### **47 Remuneration, and vacancy in office, of liquidator**

- (1) A liquidator in a creditors' winding up is entitled to receive such remuneration as is agreed between the liquidator and the liquidation committee or, if there is no liquidation committee, between the liquidator and the creditors or, failing any such agreement, as is fixed by the Court.
- (2) The creditors at a creditors' meeting may, by a majority vote, remove a liquidator, unless the liquidator was appointed by the Court.
- (3) A liquidator who resigns, is removed or for any other reason vacates office must, within 14 days after the resignation, removal or vacation of office, give notice, signed by the liquidator –
  - (a) to the registrar; and
  - (b) in a creditors' winding up, to the creditors unless the liquidator was removed by the creditors.

- (4) A liquidator who fails to comply with paragraph (3) commits an offence and is liable to a fine.
- (5) A person may be appointed to fill a vacancy that occurs, by the death, resignation, removal or otherwise, of the former liquidator –
  - (a) by the Court on the application of a manager or member, but only if the former liquidator was appointed by the Court; or
  - (b) in any other case, by the creditors.
- (6) On the appointment of a liquidator in a creditors' winding up, all the powers of the managers cease, except so far as the liquidation committee (or, if there is no committee, the creditors) sanction their continuance.

## **PART 6**

### **MISCELLANEOUS**

#### **48 References to the Court**

- (1) The following persons may apply to the Court for the determination of a question arising in the winding up, or for the Court to exercise any of its powers in relation to the winding up –
  - (a) in relation to a summary winding up, the limited liability company;
  - (b) in relation to a creditors' winding up, the liquidator or a contributory or creditor of the limited liability company.
- (2) The Court, if satisfied that it is just and beneficial to do so, may grant the application wholly or partially on such terms and conditions as it thinks appropriate, or make such other order on the application as it thinks just.
- (3) The Court may exercise all or any of the powers that would have been exercisable by it or by the Viscount if a declaration had been made in relation to the limited liability company under the Désastre Law and may make an order terminating the winding up.

#### **49 Enforcement of manager or liquidator's duty to make returns etc.**

- (1) This Regulation applies if, in a winding up, a manager or a liquidator –
  - (a) fails to comply with a requirement under this or any other enactment to deliver a document or give a notice; and
  - (b) fails to comply with the requirement within 14 days after receiving notice in writing to comply with the requirement.
- (2) On an application made by a creditor or contributory of the limited liability company, or by the registrar, the Court may make an order directing the manager or the liquidator to comply with the requirement within the time specified in the order.
- (3) The Court's order may provide that costs of, and incidental to, the application be borne, in whole or in part, by the manager or the liquidator personally.

- (4) Nothing in this Regulation prejudices the operation of any other enactment imposing penalties on a manager or a liquidator in respect of noncompliance with a requirement.

## **50 Notification that limited liability company is in liquidation**

- (1) When a limited liability company is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the limited liability company, or a liquidator of the limited liability company, being a document on or in which the name of the limited liability company appears, must contain a statement that the limited liability company is in liquidation.
- (2) In the event of failure to comply with this Regulation, the limited liability company and every manager of it who is in default commits an offence and is liable to a fine.

## **51 Liabilities as contributories of present and past members**

- (1) Except as provided by this Regulation, if a limited liability company is wound up, each present and past member of the limited liability company is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.
- (2) A past member of a particular class is not, as a member of that class, liable to contribute –
  - (a) unless it appears to the Court that the present members of that class are unable to satisfy the contributions required to be made by them as such members;
  - (b) if the past member ceased to be a member of that class for 6 months or more before the commencement of the winding up; or
  - (c) in respect of a liability of the limited liability company contracted after the past member ceased to be a member of that class.
- (3) A past or present member in the member's capacity as the holder of an LLC interest carrying an unlimited liability is not liable to contribute unless it appears to the Court that the past and present members in their capacities as the holders of LLC interests that do not carry an unlimited liability to make contributions are unable to satisfy the contributions required to be made by them as such members.
- (4) A past member in the member's capacity as the holder of an LLC interest is not liable to contribute under Article 30 of the Law if the LLC agreement stated at the time the member ceased to be a member, or states at the time of commencement of the winding up, that a member ceases to have a liability to make contributions under Article 30 upon ceasing to be a member.
- (5) A contribution is not required from a past or present member, as such a member, exceeding –
  - (a) any amount unpaid on any LLC interests in respect of which that member is liable; or
  - (b) the amount undertaken to be contributed by that member to the assets of the limited liability company if it should be wound up.

- (6) A sum due to a member of the limited liability company, in the person's capacity as a member, by way of distributions or otherwise is not in a case of competition between the person and any other creditor who is not a member of the limited liability company, a liability of the limited liability company payable to that member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.

## 52 Bar against other proceedings in bankruptcy

The winding up of a limited liability company under these Regulation bars the right to take any other proceedings in bankruptcy except the right of a creditor or the limited liability company to apply for a declaration under the Désastre Law.

## PART 7

### CONSEQUENTIAL AMENDMENTS

## 53 [Interpretation \(Jersey\) Law 1954](#) amended

In Article 8 of the [Interpretation \(Jersey\) Law 1954](#), after sub-paragraph (e), there is inserted –

- “(f) in the case of a limited liability company, the winding up of a limited liability company by means of a creditors' winding up under the Limited Liability Companies (Winding Up and Dissolution) (Jersey) Regulations 202-.”.

## 54 [Proceeds of Crime \(Jersey\) Law 1999](#) amended

In paragraph 2 of Part B of Schedule 2 to the [Proceeds of Crime \(Jersey\) Law 1999](#), after sub-paragraph (4)(c) there is inserted –

- “(d) a liquidator appointed under the Limited Liability Companies (Winding Up and Dissolution) (Jersey) Regulations 202-.”.

## 55 Citation and commencement

These Regulations may be cited as the Limited Liability Companies (Winding Up and Dissolution) (Jersey) Regulations 202- and come into force on the commencement of Article 60 of the Law.