

STATES OF JERSEY



DRAFT INCORPORATED LIMITED PARTNERSHIPS (JERSEY) LAW 201-

**Lodged au Greffe on 13th April 2010
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT INCORPORATED LIMITED PARTNERSHIPS (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Minister for Economic Development the provisions of the Draft Incorporated Limited Partnerships (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator A.J.H. Maclean**

REPORT

This Law will provide for the establishment of incorporated limited partnerships in Jersey. A limited partnership is a form of partnership having both general and limited partners. The key feature is that the limited partners' liability is limited to their partnership contribution, while the general partners' liability is unlimited. In order to retain this limited liability, the limited partners must not involve themselves in the management of the limited partnership.

Such partnerships can currently be formed under the Limited Partnerships (Jersey) Law 1994, which this Law follows closely in many respects. However, limited partnerships under the 1994 Law do not have a legal personality of their own. In some circumstances this can pose a problem for investors, e.g. if investing in another jurisdiction which does not recognise the concept of limited partnerships. In Scotland, limited partnerships do have legal personality, while in Guernsey, limited partnerships have a choice as to whether to adopt legal personality or not. It is believed that a wider range of uses of Jersey limited partnerships would be made by consumers if they had the option of creating a limited partnership with legal personality.

An incorporated limited partnership will be a limited partnership which is a body corporate, having perpetual succession and having some of the features of a company. This may be attractive for a number of reasons. Firstly, there may be an attraction to having body corporate status for those engaging in cross-border transactions, since this gives greater certainty as a matter of international law. Secondly, perpetual succession means that those dealing with the incorporated limited partnership can be confident that it will continue to exist and be held accountable for its obligations. As a body corporate, an incorporated limited partnership will be able to own property and enter into contracts in its own name.

While the general partner(s) will be liable for the incorporated limited partnership's debts (as is the case for existing limited partnerships), this liability will be a secondary one, only arising if the incorporated limited partnership itself defaults. The general partner(s) will act as an agent for the incorporated limited partnership rather than the partners as individuals and in some ways will be similar to a company director. Correspondingly, general partners' duties similar to directors' duties have been included.

As with existing limited partnerships, an incorporated limited partnership will be subject to the customary law of partnership unless the contrary is provided in this Law.

Financial and manpower implications

This Law provides for incorporated limited partnerships to pay an annual charge to the States, to be set by Regulations. If such a charge is set, then the Laws will be revenue-positive. The Royal Court will have costs associated with dealing with various applications under the Laws, but these costs will be offset by the charging of court fees. The Jersey Financial Services Commission and the Registrar will have costs associated with their functions under these Laws, but these costs will be passed on through fees. There are no manpower implications for the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 8th April 2010 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Incorporated Limited Partnerships (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law enables the registration in Jersey of limited partnerships with separate corporate personality. It is intended to complement the Limited Partnerships (Jersey) Law 1994, which already enables the registration in Jersey of unincorporated limited partnerships. The new Law generally follows the provisions of the 1994 Law except for differences arising from incorporation.

The draft Law is arranged in the following way –

Part 1 – Preliminary

Article 1 defines expressions that are used in the draft Law.

Article 2 defines the expressions “solvent” and “insolvent”.

Part 2 – Establishment of Incorporated Limited Partnerships

Article 3 allows an incorporated limited partnership to be formed, in accordance with the draft Law, for any lawful purpose. It must consist of one or more general partners and one or more other persons who are limited partners. On registration under the Law, it will be a body corporate, i.e. having separate legal personality from that of the partners, and perpetual succession. It will also have unlimited capacity – the same legal capacity as a natural person of full age.

Article 4 allows an association of persons to apply for the formation of an incorporated limited partnership by delivering to the registrar a declaration verifying the formation of the partnership. (The registrar of companies, who is already the registrar of unincorporated limited partnerships would also become the registrar for incorporated partnerships – see Article 25, below.)

If the Law has been complied with, the registrar must register the association and issue a certificate to that effect. On the issue of the certificate, the partnership becomes a body corporate. The certificate is conclusive proof that it has that status, and that the requirements of the Law in respect of registration have been complied with.

The registrar may refuse to register the association if not satisfied that the occupier of the premises that are to be its registered office in Jersey authorizes their use for that purpose.

Article 5 provides for the amendment of the certificate in the event of a change of circumstances.

Article 6 provides that (as long as at least two separate persons are partners) one person may be a partner in two separate capacities, i.e. both as a general partner and as a limited partner.

Article 7 stipulates that the name of an incorporated limited partnership must end with the words “Incorporated Limited Partnership”, or with any of the abbreviations “I.L.P.”, “ILP”, “Inc. L. P.” and “Inc LP”.

Article 8 requires an incorporated limited partnership to maintain a *bona fide* registered office in Jersey, and to keep at that office a register of its limited partners and other information in respect of the partnership. Any partner is entitled to inspect

and copy the information during ordinary business hours. The registrar is also entitled to inspect the register at the registered office, on notice, during normal working hours.

The registrar may refuse to register a change of registered office if he or she is not satisfied that the occupier of the premises that are to become the registered office authorizes their use for that purpose.

Article 9 relates to the keeping of accounts, and their audit.

Article 10 permits a limited partner to contribute to the partnership in money of any currency, or by providing property or services.

Article 11 sets out the rights and obligations of general partners.

Article 12 relates to the rights of a limited partner to information.

Article 13 deals with the right of a limited partner to share in profits.

Article 14 relates to dealings by a limited partner with the partnership.

Article 15 governs limited partners' rights as between themselves.

Article 16 deals with the return of a limited partner's contribution.

Article 17 relates to a limited partner's liability to the partnership.

Article 18 relates to a limited partner's liability to creditors.

Article 19 provides for the admission of additional limited partners.

Article 20 relates to the assignment of a limited partner's interest in the partnership.

Article 21 enables the States to make Regulations for the winding up and dissolution of solvent and insolvent incorporated limited partnerships.

Article 22 contains provisions relating to the jurisdiction of the Royal Court to order a person to comply with a requirement under the draft Law to sign or deliver or to allow the inspection or copying of a document.

Article 23 deals with the service of documents.

Article 24 relates to the authority of a general partner to sign a document on behalf of an incorporated limited partnership.

Part 3 – Miscellaneous and Final Provisions

Article 25 provides that the registrar of companies shall be the registrar of incorporated limited partnerships. (The registrar of companies already undertakes that function in respect of unincorporated limited partnerships).

It also provides for the registrar's seal, and enables the registrar to authorize any officer of the Jersey Financial Services Commission to exercise any of the registrar's functions.

Article 26 enables the Jersey Financial Services Commission to impose an annual administration fee, payable before the end of February in every year following the one in which it is incorporated, on an incorporated limited partnership.

It also provides that the States may by Regulations impose an additional amount that is to be payable by incorporated limited partnerships to the Commission with the annual

administration fee; and that the Commission is to pay to the Treasurer of the States those additional amounts that it receives.

Article 27 deals generally with fees and forms.

Article 28 relates to the ways in which documents and other information may be delivered to the registrar if the Commission has not published a form.

Article 29 relates to the inspection and production of documents kept by the registrar.

Article 30 is concerned with the destruction of old records.

Article 31 relates to the form and keeping of partnership records.

Article 32 provides for the registration in the Public Registry of Acts and orders affecting immovable property.

Article 33 relates to offences.

Article 34 deals with the criminal liability of general and limited partners for offences committed by incorporated limited partnerships under the draft Law.

It also deals with the criminal liability of directors, managers, secretaries and other persons in positions of responsibility for offences committed under the draft Law by other bodies corporate.

It also makes similar provision in respect of the partners of limited liability partnerships and those of ordinary partnerships.

Article 35 enables the States to make Regulations disqualifying persons from acting as general partners of incorporated limited partnerships and providing for their audit. Such Regulations may apply, with or without modifications, provisions in respect of those matters in the Companies (Jersey) Law 1991 or the Foundations (Jersey) Law 2009 that apply to companies or foundations.

Article 36 provides for the making of Orders by the Minister for Economic Development.

Article 37 is concerned with Rules of Court.

Article 38 makes amendments to other enactments. Textual amendments to the Bankruptcy (Désastre) (Jersey) Law 1990 are set out in the Schedule to the draft Law. The Article also contains referential amendments.

Article 39 contains in respect of incorporated limited partnerships the same saving as the 1994 Law in respect of the application of the rules of the customary law relating to *contrats de société*.

It also provides that nothing in the Limited Partnership (Jersey) Law 1994 itself applies to an incorporated limited partnership.

Article 40 provides for the citation of the draft Law, and for it to come into force on a day or days to be appointed by the States, by Act.



Jersey

DRAFT INCORPORATED LIMITED PARTNERSHIPS (JERSEY) LAW 201-

Arrangement

Article

PART 1		10
<hr/>		
PRELIMINARY		10
1	Interpretation	10
2	Meaning of “insolvent” and “solvent”	10
PART 2		10
<hr/>		
ESTABLISHMENT OF INCORPORATED LIMITED PARTNERSHIPS		10
3	Incorporated limited partnership	10
4	Registration of declaration	10
5	Amendment of declaration	10
6	General and limited partners	10
7	Name of partnership	10
8	Registered office	10
9	Accounts and audit	10
10	Contribution of limited partner	10
11	Rights and obligations of general partner	10
12	Rights of limited partner	10
13	Share of profits	10
14	Dealings by limited partner with partnership	10
15	Limited partners’ rights as between themselves	10
16	Return of limited partner’s contribution	10
17	Limited partner’s liability to partnership	10
18	Limited partner’s liability to creditors	10
19	Admission of additional limited partners	10
20	Assignments	10
21	Winding up and dissolution	10
22	Order for compliance	10
23	Service of documents	10
24	Authority to sign	10

PART 3 **10****MISCELLANEOUS AND FINAL PROVISIONS** **10**

25	Appointment of registrar.....	10
26	Annual administration fee.....	10
27	Fees, charges and forms.....	10
28	Form of documents to be delivered to registrar	10
29	Inspection and production of documents kept by registrar	10
30	Destruction of old records.....	10
31	Form of partnership's records.....	10
32	Registration in the Public Registry	10
33	Offences.....	10
34	Criminal liability of partners, directors and other officers.....	10
35	Regulations	10
36	Orders.....	10
37	Rules of Court.....	10
38	Amendments to other enactments.....	10
39	Relationship to other law	10
40	Citation and commencement.....	10

SCHEDULE **10**

1	Control of Borrowing (Jersey) Law 1947.....	10
2	Registration of Business Names (Jersey) Law 1956.....	10
3	Collective Investment Funds (Jersey) Law 1988.....	10
4	Bankruptcy (Désastre) (Jersey) Law 1990.....	10



Jersey

DRAFT INCORPORATED LIMITED PARTNERSHIPS (JERSEY) LAW 201-

A LAW to provide for the establishment, regulation and dissolution of limited partnerships with corporate personality; and for connected purposes.

Adopted by the States [date to be inserted]

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

Registered by the Royal Court [date to be inserted]

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

PART 1

PRELIMINARY

1 Interpretation

In this Law, unless the context otherwise requires –

“bankruptcy” includes any proceedings of a similar nature in a place outside Jersey;

“certificate” means the certificate of registration of a declaration issued by the registrar under Article 4 (including all amendments made to the certificate);

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998¹;

“currency” includes the euro and any other means of exchange that may be prescribed;

“declaration” means the declaration delivered to the registrar under Article 4 (including all amendments made to the declaration);

“general partner” means a person who is named as such in the declaration and, if more than one, each general partner;

“incorporated limited partnership” means an incorporated limited partnership established in accordance with this Law;

“limited partner” means a person who is named as such in the register kept under Article 8 and, if more than one, each limited partner;

“Minister” means the Minister for Economic Development;

“partner” means a limited partner or a general partner;

“partnership agreement” means any agreement in writing of the partners as to the affairs of an incorporated limited partnership and the rights and obligations of the partners among themselves;

“partnership interest” means a partner’s share of the profits and losses of an incorporated limited partnership and the right to receive distributions of partnership assets and other benefits conferred by the partnership agreement;

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

“published” means –

- (a) in respect of a fee payable by virtue of this Law, published by the Commission in accordance with Article 15(5) of the Financial Services Commission (Jersey) Law 1998; and
- (b) in any other case, published by the Commission in a manner likely to bring it to the attention of those affected;

“registrar” means the registrar of incorporated limited partnerships appointed pursuant to Article 25 and “registrar’s seal” in relation to the registrar means a seal prepared under that Article.

2 Meaning of “insolvent” and “solvent”

For the purposes of this Law, an incorporated limited partnership is insolvent when it is unable to discharge its debts and obligations (excluding liabilities to partners in respect of their partnership interests) as they fall due; and “solvent” shall be construed accordingly.

PART 2

ESTABLISHMENT OF INCORPORATED LIMITED PARTNERSHIPS

3 Incorporated limited partnership

- (1) Subject to the provisions of this Law, an incorporated limited partnership may be formed under this Law for any lawful purpose.
- (2) An incorporated limited partnership is a body corporate, having legal personality that is separate from that of its members.
- (3) An incorporated limited partnership has perpetual succession, and cannot be dissolved otherwise than by or under this Law or another enactment.

- (4) An incorporated limited partnership has unlimited capacity.
- (5) An incorporated limited partnership shall consist of –
 - (a) one or more persons who are general partners; and
 - (b) one or more other persons who are limited partners.
- (6) A body corporate may be a general partner or a limited partner.

4 Registration of declaration

- (1) An association of persons (whether or not purporting to confer limited liability on one or more of their number) shall not be an incorporated limited partnership until the requirements of Article 3(5) have been satisfied and the registrar has issued a certificate under paragraph (5) of this Article.
- (2) The registrar shall not issue a certificate unless there has been delivered to the registrar a declaration signed by each person who is, on the formation of the incorporated limited partnership, to be a general partner.
- (3) A declaration shall state –
 - (a) the name under which the incorporated limited partnership is to be conducted;
 - (b) the intended address of the registered office of the partnership;
 - (c) the full name and address of each general partner that is an individual or, in the case of a general partner who is a body corporate, the place where it is incorporated and its registered or principal office;
 - (d) that a partnership agreement has been executed by the partners; and
 - (e) such other particulars as may be prescribed.
- (4) The registrar shall maintain a register of all declarations.
- (5) On the registration of a declaration, the registrar shall issue a certificate to that effect.
- (6) The certificate shall be signed by the registrar and sealed with the registrar's seal.
- (7) The incorporated limited partnership comes into being on the issue of the certificate.
- (8) The registrar may refuse to register a declaration if he or she is not satisfied that the occupier of the premises that are to be the registered office of the incorporated limited partnership authorizes their use as its registered office.
- (9) A certificate issued under paragraph (5) is conclusive evidence of the following matters –
 - (a) that a declaration has been delivered to the registrar;
 - (b) that the incorporated limited partnership is incorporated under this Law;

- (c) that the requirements of this Law have been complied with in respect of –
- (i) registration,
 - (ii) all matters precedent to registration, and
 - (iii) all matters incidental to registration,
- in respect of the partnership.

5 Amendment of declaration

- (1) If during the continuance of an incorporated limited partnership any change is made or occurs in any of the particulars delivered pursuant to Article 4 (other than in the registered office of the partnership), a statement signed by a general partner, specifying the nature of the change, shall within 21 days of the date of the change be delivered to the registrar.
- (2) On the registration of a statement under this Article the registrar shall issue an amended certificate to that effect.
- (3) The amended certificate shall be signed by the registrar and sealed with the registrar's seal.
- (4) If default is made in compliance with paragraph (1), each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.

6 General and limited partners

A person may be a general partner and a limited partner at the same time in the same incorporated limited partnership.

7 Name of partnership

- (1) The name of each incorporated limited partnership shall end with the words "Incorporated Limited Partnership" in full or any of the abbreviations "I.L.P.", "ILP", "Inc. L. P." and "Inc LP".
- (2) The surname of a limited partner shall not appear in the name of the incorporated limited partnership unless it is also the surname of one of the general partners or the partnership has been carried on under that name before the admission of that partner as a limited partner.
- (3) The corporate name or a significant part of the corporate name of a limited partner shall not appear in the name of an incorporated limited partnership unless it is also the corporate name or a significant part of the corporate name of one of the general partners or the partnership has been carried on under that name before the admission of that corporate partner as a limited partner.
- (4) A limited partner whose surname or corporate name appears in the name of the incorporated limited partnership contrary to paragraph (2) or (3) is liable as a general partner to any creditor of the partnership who has

extended credit without actual knowledge that the limited partner is not a general partner.

- (5) The registrar may refuse to register a declaration, or a statement delivered under Article 5(1) of a change of name of an incorporated limited partnership, where the name to be registered is in the registrar's opinion in any way misleading or otherwise undesirable.
- (6) A change of the name of an incorporated limited partnership shall not have effect until the registrar registers the statement and issues the amended certificate.

8 Registered office

- (1) An incorporated limited partnership shall have a registered office in Jersey.
- (2) An incorporated limited partnership does not comply with the requirement in paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being their use for that purpose.
- (3) An incorporated limited partnership may change the address of its registered office from time to time by giving notice to the registrar.
- (4) The change shall take effect on the notice being registered by the registrar, but until the end of the period of 14 days beginning on the date on which it is registered, a person may validly serve any document on the incorporated limited partnership at its previous registered office.
- (5) The registrar may refuse to register the notice if he or she is not satisfied that the occupier of the premises that are to be the registered office of the incorporated limited partnership authorizes their use as its registered office.
- (6) An incorporated limited partnership shall keep at its registered office –
 - (a) a register showing in alphabetical order for each limited partner –
 - (i) the full name and address of each limited partner who is an individual, or in the case of a limited partner that is not an individual its name, the place where it is incorporated or otherwise established and its registered or principal office,
 - (ii) where the participation by limited partners is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held;
 - (b) a copy of the declaration, and the certificate of registration;
 - (c) a copy of the partnership agreement and each amendment made to it;
 - (d) a statement of the amount of any contributions agreed to be made by limited partners and the time at which, or events on the happening of which, the contributions are to be made;

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- (e) a statement of the amount of money and nature and value of any other property or services contributed by each limited partner and the dates thereof;
 - (f) a statement of the amount of contributions returned to limited partners and the dates thereof;
 - (g) such other particulars as may be prescribed.
- (7) The records kept under paragraph (6) shall be –
- (a) *prima facie* evidence of the particulars that are by that paragraph directed to be contained therein;
 - (b) amended within 21 days of any change in the particulars contained therein;
 - (c) available for inspection and copying without charge during ordinary business hours at the request of a partner.
- (8) The registrar may require an incorporated limited partnership to produce its register during normal working hours to the registrar at its registered office, for inspection by the registrar.
- (9) A requirement under paragraph (8) shall be made by a notice in writing served on the incorporated limited partnership at its registered office, specifying a date and a time at which the partnership is to produce the register.
- (10) The Minister may prescribe information that –
- (a) an applicant for the formation of an incorporated limited partnership; or
 - (b) an incorporated limited partnership,
- must provide to the registrar for the purpose of showing that an occupier of premises authorizes or continues to authorize the use of the premises as its registered office.
- (11) An Order under paragraph (10) may contain such other provisions as are reasonably necessary for or incidental to that purpose.
- (12) If default is made in compliance with any requirement of or made under this Article, each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.

9 Accounts and audit

- (1) An incorporated limited partnership shall keep accounting records that are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy at any time the financial position of the partnership.
- (2) Unless the partnership agreement or Regulations made under Article 34 otherwise provide, it shall not be necessary for an incorporated limited partnership to appoint an auditor or have its accounts audited.
- (3) If default is made in compliance with this Article, each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.

10 Contribution of limited partner

Any contribution to be made by a limited partner to an incorporated limited partnership may be money, in any currency, any other property, or services.

11 Rights and obligations of general partner

- (1) Subject to paragraph (2), a general partner in an incorporated limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners.
- (2) Without written consent or ratification by all the limited partners, a general partner has no authority –
 - (a) to do an act that makes it impossible to carry on the activities of the incorporated limited partnership;
 - (b) to possess incorporated limited partnership property, or dispose of any rights in incorporated limited partnership property, for other than a partnership purpose; or
 - (c) to admit a person as a general partner or to admit a person as a limited partner, unless the right to do so is given in the partnership agreement.
- (3) A general partner in an incorporated limited partnership is an agent of the partnership.
- (4) A general partner in an incorporated limited partnership, in exercising his or her powers and discharging his or her duties, shall –
 - (a) act honestly and in good faith with a view to the best interests of the partnership; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (5) Without prejudice to the operation of any rule of law empowering the partners in an incorporated limited partnership, or any of them, to authorize or ratify a breach of this Article, no act or omission of a general partner shall be treated as a breach of paragraph (4) if –
 - (a) all of the members of the partnership authorize or ratify the act or omission; and
 - (b) after the act or omission the partnership will be able to discharge its liabilities as they fall due.
- (6) Any debt or obligation incurred by a general partner in the conduct of the activities of an incorporated limited partnership shall be a debt or obligation of the partnership.
- (7) If an incorporated limited partnership fails to discharge any of its debts or obligations as it falls due, each general partner is personally liable to make good the default.

12 Rights of limited partner

A limited partner has the same right as a general partner –

- (a) during business hours, to inspect and make copies of or take extracts from the partnership records at all times;
- (b) to be given, on demand, true and full information of all things affecting the incorporated limited partnership and to be given a formal account of partnership affairs whenever circumstances render it just and reasonable.

13 Share of profits

- (1) A limited partner has, subject to this Law and the partnership agreement, the right to a share of the profits of the incorporated limited partnership.
- (2) It is immaterial whether or not the share of the profits is distributed to the limited partner.
- (3) A limited partner may receive from the incorporated limited partnership the share of the profits stipulated for in the partnership agreement only if, at the time when and immediately after payment is made, the partnership is solvent.
- (4) For a period of 6 months from the date of receipt by a limited partner of any payment representing a share of the profits of the incorporated limited partnership in circumstances where the requirements of paragraph (3) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such share of the profits is necessary to discharge a debt or obligation of the partnership incurred during the period that the share of the profits represented an asset of the partnership.

14 Dealings by limited partner with partnership

- (1) A limited partner may lend money to, borrow money from and enter into transactions with the incorporated limited partnership.
- (2) Except where the limited partner is also a general partner, a limited partner having, with respect to anything done under paragraph (1), a claim against the assets of the incorporated limited partnership shall rank as a creditor of the partnership in respect of such claim.
- (3) For the purposes of this Article, a claim described in paragraph (2) does not include a claim for a return of capital contributions.

15 Limited partners' rights as between themselves

- (1) Subject to paragraph (2), limited partners, in relation to one another, shall rank –
 - (a) *pari passu* in respect of the return of their contributions; and
 - (b) *pro rata* to those contributions in respect of profits.

- (2) Where there is more than one limited partner, the partnership agreement may provide that one or more of the limited partners is to have greater rights than the other limited partners as to –
 - (a) the return of contributions;
 - (b) profits; or
 - (c) any other matter.

16 Return of limited partner's contribution

- (1) A limited partner shall not, on dissolution or otherwise, receive out of the capital of the incorporated limited partnership a payment representing a return of any part of the limited partner's contribution to the partnership unless at the time of and immediately following such payment the partnership is solvent.
- (2) For a period of 6 months from the date of receipt by a limited partner of any payment representing a return of contribution or part thereof received by such limited partner in circumstances where the requirements of paragraph (1) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the incorporated limited partnership incurred during the period that the contribution represented an asset of the partnership.
- (3) Except –
 - (a) as provided in paragraph (2); or
 - (b) in the case of fraud,a limited partner shall not be liable to repay any payment representing a return of the limited partner's contribution or part thereof.
- (4) Subject to paragraphs (1) and (2), a limited partner may demand payment representing the return of all or part of his or her contribution –
 - (a) on the dissolution of the incorporated limited partnership;
 - (b) at the time specified in the partnership agreement for its return; or
 - (c) after the limited partner has given 6 months' notice in writing to all other partners, if no time is specified in the partnership agreement either for the return of the contribution or for the dissolution of the partnership.
- (5) A limited partner has, notwithstanding the nature of his or her contribution, only the right to demand and receive money in return for it, unless –
 - (a) there is a statement to the contrary in the partnership agreement; or
 - (b) all the partners consent to some other manner of returning the contribution.
- (6) In this Article, "payment" includes the release of any obligation forming part of the capital contribution, and any liability to make repayments pursuant to paragraph (2) shall be construed accordingly.

17 Limited partner's liability to partnership

A limited partner is liable to the incorporated limited partnership for the difference, if any, between the value of money or other property or services contributed by the limited partner to the partnership and the value of money or other property or services specified in the records kept under Article 8(6) to be contributed by the limited partner to the partnership.

18 Limited partner's liability to creditors

- (1) Except as provided in this Law, a limited partner is not liable for the debts or obligations of the incorporated limited partnership.
- (2) Except as provided in paragraph (3), a limited partner is not liable as a general partner.
- (3) Subject to paragraph (4), if a limited partner participates in the management of the incorporated limited partnership in its dealings with persons who are not partners, that limited partner shall be liable in the event of the insolvency of the partnership for all debts and obligations of the partnership incurred during the period that he or she participated in the management of the partnership as though he or she were for that period a general partner.
- (4) A limited partner shall be liable under paragraph (3) only to a person who transacts with the incorporated limited partnership with actual knowledge of the participation of the limited partner in the management of the partnership and who then reasonably believed the limited partner to be a general partner.
- (5) A limited partner does not participate in the management of an incorporated limited partnership within the meaning of this Article by doing one or more of the following –
 - (a) being a contractor for or an agent or employee of the partnership or of a general partner, or acting as a director, partner or officer of or being a shareholder of a general partner that is not an individual;
 - (b) consulting with and advising a general partner with respect to the activities of the partnership;
 - (c) investigating, reviewing, approving or being advised as to the accounts or affairs of the partnership or exercising any right conferred by this Law;
 - (d) acting as surety or guarantor for the partnership either generally or in respect of specific obligations;
 - (e) approving or disapproving an amendment to the partnership agreement; or
 - (f) voting on, or otherwise signifying approval or disapproval of, one or more of the following –
 - (i) the winding up and dissolution of the partnership,
 - (ii) the purchase, sale, exchange, lease, pledge, hypothecation, creation of a security interest or other dealing in any asset, by or of the partnership,
 - (iii) the creation or renewal of an obligation by the partnership,

- (iv) a change in the nature of the activities of the partnership,
 - (v) the admission, removal or withdrawal of a general or a limited partner and the continuation of the partnership thereafter, or
 - (vi) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners.
- (6) Paragraph (5) shall not import any implication that the possession or exercise of any other power by a limited partner will necessarily constitute the participation by such limited partner in the management of the incorporated limited partnership.

19 Admission of additional limited partners

An additional limited partner shall not be admitted to an incorporated limited partnership except in accordance with the partnership agreement and by entry in the register under Article 8(6)(a).

20 Assignments

- (1) A limited partner may, subject to the partnership agreement, assign his or her interest, in whole or in part, in the incorporated limited partnership.
- (2) An assignee of the interest, in whole or in part, of a limited partner does not become a limited partner in the incorporated limited partnership until the assignee's ownership of the assigned interest is entered in the register referred to in Article 8(6)(a), and until so entered he or she has none of the rights of a limited partner exercisable against the partnership or against any of the partners other than the assignor.
- (3) Subject to paragraph (4), on becoming a limited partner, an assignee acquires the rights and powers and is subject to all the restrictions and liabilities that his or her assignor had in respect of the assigned interest immediately before the assignment.
- (4) On becoming a limited partner an assignee shall not assume any liability of the assignor arising under Article 13(4), 16(2) or 18(3) and, notwithstanding any term of the partnership agreement or any other agreement to the contrary, no such assignment shall relieve the assignor of any liability under those paragraphs.

21 Winding up and dissolution

- (1) The States may make Regulations providing for the winding up and dissolution of solvent and insolvent incorporated limited partnerships.
- (2) Regulations made under paragraph (1) may create offences, and may prescribe penalties for such offences not exceeding imprisonment for 2 years and a fine.

22 Order for compliance

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

23 Service of documents

- (1) Service of a document on an incorporated limited partnership may be effected by sending it by post or delivering it to the registered office of the partnership.
- (2) In this Article, “registered office” means –
 - (a) the office that is for the time being shown as the registered office of the incorporated limited partnership in the register maintained under Article 4(4); or
 - (b) if the registrar has under Article 8(4) registered a notice of change of address, the office that is for the time being shown as the registered office of the partnership in the last notice so registered.

24 Authority to sign

Where a general partner executes a document on behalf of the incorporated limited partnership, it shall be conclusively presumed in favour of any person who is not a partner that –

- (a) the general partner has the authority under which the general partner purports to act; and
- (b) the executed document has been validly executed.

PART 3**MISCELLANEOUS AND FINAL PROVISIONS****25 Appointment of registrar**

- (1) The registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991² shall be the registrar of incorporated limited partnerships.
- (2) The Commission may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the establishment of incorporated limited partnerships.

- (3) Any functions of the registrar under this Law may, to the extent authorized by the registrar, be exercised by any officer on the staff of the Commission.

26 Annual administration fee

- (1) The Commission may require the payment to it by an incorporated limited partnership of a published annual administration fee.
- (2) The States may by Regulations provide that, in addition to the annual administration fee, an incorporated limited partnership shall pay to the Commission annually such amount as the States determines in the Regulations.
- (3) The annual administration fee and the annual additional amount (if any) are payable by an incorporated limited partnership to the Commission before the end of February in each year following the year in which the partnership is established.
- (4) An annual administration fee and an annual additional amount (if any) are debts due by an incorporated limited partnership to the Commission, and are recoverable accordingly in a court of competent jurisdiction.
- (5) The Commission shall pay to the Treasurer of the States the additional amounts that are paid to the Commission under Regulations made under paragraph (2).

27 Fees, charges and forms

- (1) The Commission may require the payment to it of published fees in respect of the performance by the registrar of his or her functions under this Law or a charge for the provision by the registrar of any service, advice, or assistance.
- (2) Where a fee mentioned in paragraph (1) is payable in respect of the performance of a function by the registrar the registrar need take no action until the fee is paid.
- (3) Where the fee is payable on the receipt by the registrar of a document required to be delivered to the registrar the registrar shall be taken not to have received the document until the fee is paid.
- (4) The Commission may publish forms and other documents to be used for any of the purposes of this Law, together with details of the manner in which any such document to be delivered to the registrar is to be delivered or authenticated.

28 Form of documents to be delivered to registrar

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

- (a) the document is delivered in a form and manner that are acceptable to the registrar; or

- (b) any information to which the requirement relates is delivered in material, other than a document, that is acceptable to the registrar,
- and the document or material, as the case may be, is accompanied by the published fee, if any.

29 Inspection and production of documents kept by registrar

- (1) Subject to the provisions of this Article, a person may –
- (a) inspect a document delivered to the registrar under this Law and kept by the registrar or, if the registrar thinks fit, a copy thereof;
 - (b) require a certificate of the registration of a declaration or copy, certified or otherwise, of any other document or part of any other document referred to in sub-paragraph (a),
- and a certificate given under sub-paragraph (b) shall be signed by the registrar and sealed with the registrar's seal.
- (2) A copy of or extract from a record kept by the registrar, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to the registrar under this Law, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.

30 Destruction of old records

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

31 Form of partnership's records

- (1) The records that an incorporated limited partnership is required by this Law to keep may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.
- (2) An incorporated limited partnership shall take reasonable precautions –
- (a) to prevent loss or destruction of;
 - (b) to prevent falsification of entries in; and
 - (c) to facilitate detection and correction of inaccuracies in,
- the records required by this Law to be kept.

- (3) If default is made in compliance with paragraph (2), each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.

32 Registration in the Public Registry

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

33 Offences

A person who, in or in connection with any document, material, evidence or information –

- (a) that is required to be kept under Article 8(6); or
- (b) that is required to be delivered to the registrar under this Law,

knowingly or recklessly makes a statement that is false or misleading in any material particular shall be guilty of an offence and liable to imprisonment for 2 years and a fine.

34 Criminal liability of partners, directors and other officers

- (1) This Article applies where an offence under this Law by an incorporated limited partnership or by any other body corporate, or by a limited liability partnership, is proved –
 - (a) to have been committed with the consent or connivance of a person mentioned in paragraph (2); or
 - (b) to be attributable to any neglect on the part of a person mentioned in paragraph (2).
- (2) The persons to whom paragraph (1) refers are –
 - (a) in the case of an incorporated limited partnership, a general partner;
 - (b) in the case of an incorporated limited partnership, a limited partner who is participating in the management of the partnership;
 - (c) in the case of any other body corporate, a director, manager, secretary or other similar officer of the body corporate;
 - (d) in the case of a limited liability partnership, a partner; or
 - (e) in any case, any other person purporting to act in a capacity described in any of sub-paragraphs (a), (b), (c) and (d).
- (3) Where this Article applies, the person shall also be guilty of the offence and liable in the same manner as the incorporated limited partnership, the other body corporate or the limited liability partnership to the penalty provided for that offence.
- (4) Where the affairs of a body corporate (other than an incorporated limited partnership) are managed by its members, paragraphs (1) and (3) shall apply in relation to acts and defaults of a member in connection with his

or her functions of management as if the member were a director of the body corporate.

- (5) This Article does not apply to an offence under Article 33.

35 Regulations

- (1) The States may by Regulations –
- (a) disqualify persons for office as general partners of incorporated limited partnerships; and
 - (b) provide for the audit of such partnerships.
- (2) Regulations made under paragraph (1) may provide for and apply in respect of incorporated limited partnerships, with or without modifications –
- (a) any provisions in or made under the Companies (Jersey) Law 1991; and
 - (b) any provisions in or made under the Foundations (Jersey) Law 2009³,
- that apply, in respect of a company or a foundation under either of those Laws, to a matter to which paragraph (1) refers.
- (3) Regulations made under paragraph (1) may provide for the Minister or Commission to exercise a discretion in respect of matters provided for in the Regulations.
- (4) Regulations made under paragraph (1) may create offences, and may impose penalties for such offences not exceeding imprisonment for 2 years and a fine.

36 Orders

- (1) The Minister may by Order make provision for the purpose of carrying this Law or any Regulations made under this Law into effect and in particular, but without prejudice to the generality of the foregoing, for prescribing any matter that is to be prescribed under this Law or the Regulations.
- (2) An Order made under this Law may contain such incidental provisions as the Minister may consider to be necessary or expedient.
- (3) The Minister shall consult the Commission before making any Order under this Law.

37 Rules of Court

The power to make Rules of Court under the Royal Court (Jersey) Law 1948⁴ shall include a power to make Rules for the purposes of this Law.

38 Amendments to other enactments

- (1) The enactments specified in the Schedule shall be amended in the manner set out in the Schedule.
- (2) In every other enactment, unless the context otherwise requires –
 - (a) every reference to a partnership shall be construed as including a reference to an incorporated limited partnership, and in the context of any such reference “partner” and “member of a partnership” shall be construed accordingly; and
 - (b) every reference to a limited partnership shall be construed as including a reference to an incorporated limited partnership, and in the context of any such reference “partner”, “member of a partnership”, “general partner”, “the general partner” and “limited partner” shall be construed accordingly.

39 Relationship to other law

- (1) The rules of customary law applicable to partnerships (*contrats de société*) shall apply to incorporated limited partnerships, except in so far as they are inconsistent with the express provisions of this Law.
- (2) Nothing in the Limited Partnerships (Jersey) Law 1994⁵ shall apply to an incorporated limited partnership.

40 Citation and commencement

- (1) This Law may be cited as the Incorporated Limited Partnerships (Jersey) Law 201-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint, and different days may be appointed for different provisions.

SCHEDULE

(Article 38(1))

1 Control of Borrowing (Jersey) Law 1947⁶

- (1) Article 1(3) shall be renumbered as Article 1(3A).
- (2) Before Article 1(3A) (as so renumbered) there shall be inserted the following paragraph –
 - “(3) In this Law –
 - (a) any reference to a limited partnership within the meaning of the Limited Partnerships (Jersey) Law 1994⁷ includes a reference to an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 201-⁸; and
 - (b) the reference in Article 2(10)(b) to the Limited Partnerships (Jersey) Law 1994 in respect of a limited partnership includes a reference to the Incorporated Limited Partnerships (Jersey) Law 201- in respect of an incorporated limited partnership.”.

2 Registration of Business Names (Jersey) Law 1956⁹

In Article 1(1), in the definition “limited partnership”, before the words “a limited partnership” there shall be inserted the words “an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 201-¹⁰,”.

3 Collective Investment Funds (Jersey) Law 1988¹¹

- (1) In Article 5(2), after the figures “1997” there shall be inserted the words “or an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 201-¹².”.
- (2) In Article 8(1)(c)(i), before the words “a limited partnership” there shall be inserted the words “an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 201-,”.
- (3) In Article 8A(1)(c), before the words “a limited partnership” there shall be inserted the words “an incorporated limited partnership,”.
- (4) In Article 8B(10)(b)(iii), before the words “a limited partnership” there shall be inserted the words “an incorporated limited partnership,”.

4 Bankruptcy (Désastre) (Jersey) Law 1990¹³

- (1) In the Long Title, after the words “in the management of companies” there shall be inserted the words “and other bodies corporate and legal persons”.
- (2) In Article 1(1) –
 - (a) after the definitions “hypothec”, “judicial hypothec” and “conventional hypothec” there shall be inserted the following definition –

“ ‘incorporated limited partnership’ has the meaning given to it in the Incorporated Limited Partnerships (Jersey) Law 201-¹⁴;”;
 - (b) in the definition “registrar”, after paragraph (a) there shall be inserted the following paragraph –

“(aa) an incorporated limited partnership, the registrar appointed pursuant to Article 25 of the Incorporated Limited Partnerships (Jersey) Law 201-; and”.
- (3) In Article 4(1) –
 - (a) in sub-paragraph (d), the word “; or” shall be deleted;
 - (b) after sub-paragraph (d) there shall be inserted the following sub-paragraph –

“(da) who is an incorporated limited partnership; or”.
- (4) After Article 10(3) there shall be added the following paragraph –

“(4) If the debtor is an incorporated limited partnership –

 - (a) a transfer of any interest in the debtor not being a transfer made to or with the sanction of the Viscount; or
 - (b) an alteration in the status of the partnership’s partners, as partners,

made after the declaration is void.”.
- (5) In Article 17B –
 - (a) after paragraph (1) there shall be added the following paragraph –

“(1A) For the purposes of Articles 17 and 17A, a person is connected with an incorporated limited partnership if the person is –

 - (a) a general partner of the partnership;
 - (b) an associate of a general partner of the partnership; or
 - (c) an associate of the partnership.”;
 - (b) in paragraph (2)(b), after the words “any person with whom he or she is in partnership”, there shall be inserted the words “(whether or not such a partnership is a limited partnership)”;
 - (c) in paragraph (2)(f) the word “; and” shall be deleted;
 - (d) in paragraph (2), after sub-paragraph (f) there shall be inserted the following sub-paragraphs –

“(fa) a limited partner of an incorporated limited partnership is an associate of a general partner of the partnership;

- (fb) an incorporated limited partnership is an associate of another body corporate if the same person has control of both of those bodies corporate, or a person has control of one of those bodies corporate and either persons who are his or her associates, or he or she and persons who are his or her associates, have control of the other body corporate;
 - (fc) an incorporated limited partnership is an associate of another body corporate if each of those bodies corporate 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 member of either group as replaced by a person of whom he or she is an associate;
 - (fd) an incorporated limited partnership is an associate of another person if that person has control of the partnership or if that person and persons who are his or her associates together have control of the partnership; and”;
- (e) after paragraph (5) there shall be inserted the following paragraph –
- “(5A) For the purposes of this Article, a general partner of an incorporated limited partnership shall be treated as employed by the partnership.”;
- (f) after paragraph (6) there shall be added the following paragraph –
- “(6A) For the purposes of this Article, a person shall be taken as having control of an incorporated limited partnership if –
- (a) the terms of the partnership agreement so provide;
 - (b) the general partners of the partnership or of another body corporate which has control of it (or any of them) are accustomed to act in accordance with his or her directions or instructions; or
 - (c) he or she has control (within the meaning of this Article) of another body corporate which has control of the partnership,
- and where 2 or more persons together satisfy either of the above conditions, they shall be taken as having control of the partnership.”.
- (6) For Article 18(2) there shall be substituted the following paragraph –
- “(2) Where the debtor is a company or an incorporated limited partnership, any person who –
- (a) is or was at the time of the declaration a director of the company; or
 - (b) is or was at the time of the declaration a general partner of the partnership,
- shall notify the Viscount immediately in writing of any change of his or her address, employment or name.”.
- (7) In Article 20 –

- (a) for paragraph (2) there shall be substituted the following paragraph –
- “(2) Where the debtor is a company or an incorporated limited partnership, the Viscount may at any time summon any officer of the company or partnership or person known or suspected to have in his or her possession any of its property or supposed to be indebted to it, or any person whom the Viscount deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company or partnership.”;
- (b) for paragraph (5) there shall be substituted the following paragraph –
- “(5) For the purposes of paragraph (2), ‘officer’ –
- (a) in the case of a company, includes a director, manager or secretary; and
- (b) in the case of an incorporated limited partnership, means a general partner.”.
- (8) In Article 24(1), in the definition “private office”, after the words “liquidator of a company,” there shall be inserted the words “general partner of an incorporated limited partnership,”.
- (9) After Article 36(2) there shall be inserted the following paragraph –
- “(2A) If the debtor is an incorporated limited partnership, the Viscount must notify the registrar in writing of the date of payment of the final dividend.”.
- (10) In Article 37(6) –
- (a) in sub-paragraph (a), the word “; and” shall be deleted;
- (b) after sub-paragraph (a) there shall be inserted the following sub-paragraph –
- “(aa) if the debtor is an incorporated limited partnership and the partnership agreement does not otherwise provide, distribute the surplus among the partners according to their rights and interests in the partnership; and”.
- (11) For Article 38(2) and (3) there shall be substituted the following paragraphs –
- “(2) Subject to paragraph (3), where the debtor is a company registered under the Companies Law, foundation or incorporated limited partnership, it shall be dissolved with effect from the date on which the registrar receives the notice under Article 36(2) or (2A) (as the case may be), which notice the registrar shall thereupon register.
- (3) Paragraph (2) shall not apply where the Attorney General has notified the registrar that criminal proceedings have been instituted or are pending against the company, foundation or incorporated limited partnership.”.
- (12) In the heading to Part 10, after the words “COMPANY” there shall be added the words “OR INCORPORATED LIMITED PARTNERSHIP”.

- (13) Article 42A shall be renumbered as paragraph (1) of that Article, and to the Article there shall be added the following paragraph –

“(1) Words and expressions (in addition to those already defined in Article 1(1) of this Law) which are used in this Part and defined in the Incorporated Limited Partnerships (Jersey) Law 201-¹⁵ have the same meanings in this Part as they have in that Law.”.

- (14) In Article 43(1) –

- (a) after the words “in respect of a company” there shall be inserted the words “or incorporated limited partnership”;
- (b) in sub-paragraph (a), after the words “the company” there shall be inserted the words “or partnership”;
- (c) in sub-paragraph (b), after the words “the company” there shall be inserted the words “or partnership”.

- (15) In Article 45 –

- (a) for paragraph (1) there shall be substituted the following paragraph –

“(1) If, in the course of a désastre in respect of a company or an incorporated limited partnership, it appears that any business of the company or partnership has been carried on with intent to defraud its creditors or creditors of another person, or for a fraudulent purpose, the court may, on the application of the Viscount, 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 assets of the company or partnership as the court thinks proper.”;

- (b) for paragraph (4) there shall be substituted the following paragraph –

“(4) Where the court makes an order under this Article or Article 44 in relation to a person who is a creditor of the company or partnership, it may direct that the whole or part of a debt owed by the company or partnership to that person and any interest thereon shall rank in priority after all other debts owed by the company or partnership and after any interest on those debts.”.

- (16) After Article 45A there shall be inserted the following Article –

“45AA Liability in respect of returned contributions

- (1) This Article applies where a declaration has been made in respect of an incorporated limited partnership and –
 - (a) the partnership has within 6 months before the declaration made to a limited partner a payment representing a return of any part of that partner’s contribution to the partnership;
 - (b) the payment was not made wholly out of profits available for distribution; and
 - (c) the aggregate realisable value of the partnership’s assets and the amount paid by way of contribution to its assets (apart

from this Article) is not sufficient for the payment of its liabilities and the expenses in connection with the ‘désastre’.

- (2) In this Article, the amount of a payment which has not been made wholly out of profits available for distribution is referred to as ‘the relevant payment’.
- (3) Subject to paragraph (4), the court on the application of the Viscount may order the limited partner to whom the payment was made, or a general partner, to contribute in accordance with this Article to the assets of the company or partnership so as to enable the insufficiency to be met.
- (4) A limited partner to whom a payment was made may be ordered to contribute an amount not exceeding so much of the relevant payment as the limited partner received, together with such interest as may be payable by that partner to the incorporated limited partnership under Article 16(2) of the Incorporated Limited Partnership (Jersey) Law 201- in respect of the relevant payment.”.

(17) After Article 45B there shall be inserted the following Article –

“45C Liability as contributories of present and past partners of incorporated limited partnerships

- (1) Except as otherwise provided by this Article, where a declaration has been made in respect of an incorporated limited partnership, each present and past partner of the partnership is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the ‘désastre’, and for the adjustment of the rights of the contributories among themselves.
- (2) A contribution shall not be required from a present or past limited partner of an incorporated limited partnership, as such a partner, exceeding the amount for which, by virtue of Articles 16 and 17 of the Incorporated Limited Partnerships (Jersey) Law 201-, he or she is liable to the partnership.
- (3) A sum due to a partner of an incorporated limited partnership in his or her capacity as a partner, by way of profits or otherwise, is not in a case of competition between himself or herself and any other creditor who is not a partner of the partnership a liability of the partnership payable to that partner, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.”.

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- 1* chapter 13.250
2 chapter 13.125
3 chapter 13.265
4 chapter 07.770
5 chapter 13.500
6 chapter 24.150
7 chapter 13.500
8 P.45/2010
9 chapter 13.650
10 P.45/2010
11 chapter 13.100
12 P.45/2010
13 chapter 04.160
14 P.45/2010
15 P.45/2010