

# STATES OF JERSEY



Jersey

## **DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT No. 2) (JERSEY) LAW 202-**

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**Lodged au Greffe on 15th February 2022  
by the Minister for External Relations and Financial Services  
Earliest date for debate: 29th March 2022**

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**STATES GREFFE**





Jersey

## **DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT No. 2) (JERSEY) LAW 202-**

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

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations and Financial Services has made the following statement –

In the view of the Minister for External Relations and Financial Services, the provisions of the Draft Limited Liability Companies (Amendment No. 2) (Jersey) Law 202- are compatible with the Convention Rights.

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

*Minister for External Relations and Financial Services*

Dated: 15th February 2022



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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.

As secondary legislation was developed, the need for additional changes to the LLC Law were identified which would help to ensure that Jersey’s LLC remained a competitive and attractive product. This proposition clarifies certain existing provisions of the LLC Law and aims to ensure that the Jersey LLC is an attractive and familiar product to the target market while still operating within Jersey’s well-respected regulatory framework and in line with international standards.

### Consultation

During September 2020, the Government of Jersey consulted on changes to the LLC Law as part of a consultation on secondary legislation. 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 Law and associated legislation.

### The Draft Law

A number of the amendments to the LLC Law are to provide clarification of intent. The substantive amendments to the LLC Law are set out below.

#### *Article 2*

Article 2 clarifies the rights and obligations that comprise “LLC interests” to align with provisions in other jurisdictions. This ensures that the Jersey LLC remains familiar to those most likely to use the product.

#### *Article 4*

The Jersey LLC has separate personality but is not a body corporate. During consultation with relevant stakeholders it became apparent that there may be cause to have an LLC that is a body corporate. Article 4 of the Draft Law inserts a new Article 2A, which permits changes to be made to the LLC Law by way of Regulation to enable the introduction of an LLC in Jersey that is a body corporate.

#### *Article 5*

Article 5 of the LLC Law requires an LLC to correct any false or inaccurate information in its declaration. The amendment in the Draft Law now permits an LLC to change its name, which may be required during the course of its existence. To do so, the LLC is required to serve notice on the registrar.

**Financial and manpower implications**

There are no resource or manpower implications arising for the States of Jersey as a result of this Law.

**Human Rights notes**

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

**APPENDIX TO REPORT****Human Rights Notes on the Draft Limited Liability Companies (Amendment No. 2) (Jersey) Law 202-**

These notes have been prepared in respect of the draft Limited Liability Companies (Amendment No. 2) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department.

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law gives rise to no human rights concerns.

It makes certain additional clarificatory and technical amendments to the Limited Liability Companies (Jersey) Law 2018 (the “**Principal Law**”), including the incorporation of a provision that will allow the States Assembly, by Regulations, to make further amendments to the Principal Law to confer a power to form a limited liability company that is a body corporate.





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## EXPLANATORY NOTE

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This Law, if passed, would amend the Limited Liability Companies (Jersey) Law 2018 (the “principal Law”) to make miscellaneous amendments before the principal Law is brought into force. The amendments to the principal Law made by this Law must be read in conjunction with the amendments made by the Limited Liability Companies (Amendment) (Jersey) Law 2020 which are pending. The principal Law and all the amendments are set to come into force at the same time.

*Article 1* provides that this Law amends the principal Law.

*Article 2* amends Article 1(1) of the principal Law to substitute the definition of the term “LLC interest” and to amend the definition of the term “manager” so that it includes a member in whom the management of the limited liability company vests under Article 21(4).

*Article 3* amends Article 2(2) of the principal Law so that it is subject to new Article 2A. Article 2(2) provides that a limited liability company has legal personality that is separate from that of its members but is not a body corporate.

*Article 4* inserts new Article 2A in the principal Law which gives the States the power to make Regulations to amend the principal Law to allow for the formation of a limited liability company that is a body corporate.

*Article 5* amends Article 5 of the principal Law to permit a limited liability company to change its name from time to time by giving notice to the registrar.

*Article 6* amends Article 8(6)(a) of the principal Law, which provides for the limited liability company to have a registered office, to change a reference to “document” to “register”.

*Article 7* amends Article 13 of the principal Law to permit a person to be admitted as member of the limited liability company, even if the member’s LLC interest does not comprise economic rights, voting rights or any other rights.

*Article 8* amends Article 37 of the principal Law to limit distribution or release if the result of the distribution or release is that the limited liability company becomes insolvent.

*Article 9* amends Article 42(2) of the principal Law which deals with the ceasing of rights of a member on assignment, to change a reference to Article 37(3) to a reference to Article 37(2).

*Article 10* amends Article 47 of the principal Law to impose a duty on the manager of a limited liability company to act in good faith in respect of the rights, authorities and obligations that are exercised or performed by the manager or to which the manager is subject in connection with the management of the limited liability company.

*Article 11* amends Article 53(2) of the principal Law, which deals with the destruction of old records, to correct an error by deleting the word “incorporated”.

*Article 12* amends Article 59(1) of the principal Law, which provides for penalties, to change a reference to Article 53(6) to a reference to Article 54(6).

*Article 13* amends Article 60(2) of the principal Law, which gives the States the power to make Regulations, to change a reference to Article 10 to a reference to Article 12.

*Article 14* provides that this Law may be cited as the Limited Liability Companies (Amendment No. 2) (Jersey) Law 202- and comes in to force immediately after the commencement of the Limited Liability Companies (Amendment) (Jersey) Law 2020.





Jersey

## **DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT No. 2) (JERSEY) LAW 202-**

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Jersey

## **DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT No. 2) (JERSEY) LAW 202-**

**A LAW** to amend the Limited Liability Companies (Jersey) Law 2018.

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

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

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### **1 Limited Liability Companies (Jersey) Law 2018 amended**

This Law amends the Limited Liability Companies (Jersey) Law 2018.

### **2 Article 1 (interpretation) amended**

In Article 1(1) –

- (a) for the definition “LLC interest” there is substituted –
  - “ “LLC interest” means any or all of the following –
  - (a) a member’s share of the profits and losses of a limited liability company;
  - (b) a member’s right to receive distributions of the limited liability company’s assets;
  - (c) a member’s voting rights;
  - (d) any other rights, benefits and obligations conferred or imposed upon a member by the LLC agreement or this Law;”;
- (b) in the definition “manager” for “Article 21” there is substituted “Article 21(1) and includes a member in whom the management of the limited liability company vests under Article 21(4)”.

**3 Article 2 (limited liability company) amended**

In Article 2, in paragraph (2), at the beginning there is inserted “Subject to Article 2A”.

**4 Article 2A (limited liability company that is a body corporate) inserted**

After Article 2 there is inserted –

**“2A Limited liability company that is a body corporate**

The States may by Regulations make any amendments to this Law (other than this Article) that they consider appropriate for and in connection with –

- (a) conferring a power to form a limited liability company that is a body corporate; and
- (b) applying, disapplying or modifying a provision of this Law in relation to a limited liability company so formed.”.

**5 Article 5 (amendment of declaration) amended**

In Article 5, after paragraph (4), there is inserted –

- “(5) Despite paragraphs (1) to (4), a limited liability company may change its name from time to time by giving notice to the registrar.”.

**6 Article 8 (registered office) amended**

In Article 8(6)(a) for “document” there is substituted “register”.

**7 Article 13 (admission of members and LLC interests) amended**

In Article 13 –

- (a) for paragraph (5) there is substituted –
  - “(5) Subject to the LLC agreement, a person may be admitted as member of the limited liability company, even if the member’s LLC interest does not comprise one or more of the following –
    - (a) economic rights;
    - (b) voting rights;
    - (c) any other rights.”;
  - (b) in paragraph (6) after “acquiring an LLC interest” there is inserted “that comprises any economic rights”;
  - (c) in paragraph (7) for “or any other interest” there is substituted “or any other securities”;
  - (d) in paragraph (10) “and any interest of a member who has not acquired an LLC interest in a limited liability company” is deleted.

**8 Article 37 (limitation on distribution) amended**

In Article 37(1), after “insolvent” there is inserted “or if the result of the distribution or release is that the limited liability company becomes insolvent”.

**9 Article 42 (ceasing of rights of member on assignment) amended**

In Article 42(2), for “37(3)” there is substituted “37(2)”.

**10 Article 47 (fiduciary and other duties owed and not owed) amended**

In Article 47, for paragraph (1) there is substituted –

“(1) A manager owes a duty to the limited liability company to act in good faith in respect of the rights, authorities and obligations that are exercised or performed by the manager or to which the manager is subject in connection with the management of the limited liability company.

(1A) Subject to the LLC agreement and to the duty referred to in paragraph (1), a manager does not owe any duty (fiduciary or otherwise) to the limited liability company or any member or other person in respect of the limited liability company.”.

**11 Article 53 (destruction of old records) amended**

In Article 53(2), for “an incorporated limited liability company” there is substituted “a limited liability company”.

**12 Article 59 (penalties) amended**

In Article 59(1), for “53(6)” there is substituted “54(6)”.

**13 Article 60 (Regulations) amended**

In Article 60(2)(f), for “Article 10” there is substituted “Article 12”.

**14 Citation and commencement**

This Law may be cited as the Limited Liability Companies (Amendment No. 2) (Jersey) Law 202- and comes into force immediately after the commencement of the Limited Liability Companies (Amendment) (Jersey) Law 2020.