STATES OF JERSEY

LIMITED LIABILITY COMPANIES (JERSEY) LAW 201-: CONSULTATION SUMMARY OF RESPONSES

Presented to the States on 26th April 2018
by the Chief Minister

STATES GREFFE

Response to consultation on Limited Liability Companies (Jersey) Law 201-

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Summary:

The Chief Minister's Department is exploring the proposal to enact a law enabling the creation of limited liability companies ("**LLCs**"). On 20 November 2017, it published a consultation on a draft of the proposed new Limited Liability Companies (Jersey) Law 201- (the "**Draft Law**") inviting comments by 12 January 2018 (the "**Consultation**"). This document provides a summary of the response to and the outcome of that Consultation.

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Overview of industry response to the Consultation

In total, detailed responses to the questions raised in the Consultation were received from four sources (some responses being collated efforts) (the "**Respondents**"), with another simply confirming support. Government would like to thank all Respondents for their considerable time and effort.

The overall response to the Consultation was positive. Suggestions and concerns were raised with regard to particular aspects of the Draft Law. These have been considered (as outlined in this document) and reflected in the Amended Draft Law accordingly.

For the purpose of providing the Respondents with as detailed feedback on the Consultation as possible, this document addresses each question raised by the Consultation (some of which are grouped for convenience), summarises the responses received and provides Government comments in *italics*.

Response to Consultation

Question 1(a): Do you agree that there is market for LLCs in Jersey for the purposes of targeting US (and EU equivalent) business notwithstanding that certain jurisdictions (e.g. England and Wales) may not recognise them as transparent entities for the purposes of taxation and they are therefore unlikely to be used (at least directly) in transactions involving such jurisdictions? If so what do you envisage a Jersey LLC being used for (e.g. within an investment fund structure)? Please be as specific as possible.

Question 1(b): Do you agree that Jersey should have an LLC law in place in order to market to the UK if the English law (and HMRC) position changes so as to readily recognise LLCs as transparent entities (if so elected)?

Question 1(c): Based on current drafting, do you believe that a Jersey LLC would give rise to any actual or potential risks to Jersey? If so, please explain such risks.

Respondent 1 confirmed a belief in a potential market for LLCs in Jersey for the purposes of targeting US (and EU equivalent) business as well as potentially to the UK. In particular, the Respondent noted that the potential use of LLCs would be maximised if they could be licensed as funds services businesses. It was suggested that, provided the JFSC licensing policy is amended accordingly, this would include acting as a general partner, management vehicle, carried interest distribution vehicle, portfolio holding vehicle and joint venture vehicle. It also suggested that (if there were to be an extension of the scope of the regulatory laws to cover LLCs), consideration should be given to extending the "connected companies" exemption for private activities conducted within a group of companies to other entities such as LLCs, limited liability partnerships ("**LLPs**") and limited partnerships ("**LPs**"). No risks were identified.

Government comment:
Whilst we note the regulation of LLCs (including any consideration of extending the "connected companies" exemption) will be legislated for separately (and is the subject of ongoing discussions with the JFSC), Government notes and agrees with the Respondent regarding the potential uses of LLCs.

Respondent 2 confirmed a similar belief that its flexible governance structure would make LLCs attractive to the investment management industry generally. It confirmed several practical situations where foreign counsel had asked for an LLC vehicle and where the transparent alternatives available in Jersey were not ideal. For example, an LP would not be suitable where the partners (investors) intended to participate in certain management activities, as a limited partner may lose limited liability status in such circumstances. The

Respondent also noted additional costs in creating and running two vehicles (the LP and a general partner) as opposed to one (simply, the LLC). The attractiveness of LLCs in fund structures (as carry vehicles, general partners and fund managers) was noted. The Respondent also agreed that, whilst the UK may not, as a starting point, regard LLCs as transparent, "tick the box" entities are widely used in other parts of the world and would therefore be familiar to the wider investment industry (in particular US-based investment managers). LLCs would therefore be beneficial regardless of HMRC's position and ideally placed should that position change. No risks were identified.

Government comment:
Government notes and agrees with the Respondent.

Respondent 3 confirmed a similar belief that a primary market for LLCs would be inward investment by US asset managers. However, the Respondent also suggested that having a vehicle with the ability to be treated as either transparent or as a company for tax purposes in the UK would be of significant interest to structuring lawyers and accountants. It suggested the Amended Draft Law should therefore more closely reflect English law criteria to enable structures to argue that a Jersey LLC should be treated as transparent in the UK (noting that certain other jurisdictions have similar criteria). Addressing the "connected companies" exemption (also raised by Respondent 1), the Respondent also suggested that it would be helpful to group tax planning if an LLC were able to issue interests akin to ordinary share capital. With regard to risks, the Respondent suggested that (on the basis of the Draft Law) Jersey LLCs may be of limited appeal given they would be regarded as companies for UK tax purposes and therefore primarily of use to US asset managers, which the Respondent felt to be a limited market in Jersey.

Government comment:
As outlined in the Consultation, Government notes there have been developments to suggest that US Law LLCs may (on a case-by-case basis) be treated in the UK as transparent for tax purposes but that HMRC's default (published) position is to treat them as companies. As the intention for the Amended Draft Law is to align with the US Law (as defined in the Consultation), we believe that HMRC's position on Jersey LLCs would likely be the same. Whilst we acknowledge that the Amended Draft Law could be aligned with English law in an effort to more readily achieve transparent status in that jurisdiction, Government believes that would dilute the intention of aligning closely with the US Law with no guarantee of success given HMRC's current classification of Jersey LLPs. Instead, the Draft Law was intended to reflect US Law as a primary target market for Jersey, whilst allowing for the LLC agreement to be drafted in such a way as to meet English transparency criteria and, therefore, be considered transparent on a case-by-case basis by (for example) HMRC. However, the latter (given the lack of certainty) is considered at this stage to be secondary (whilst noting that if

English law treatment of US Law LLCs were to change, the Jersey LLC would of course be well placed to take advantage).

With regard to the suggestion of permitting an LLC to issue interests akin to ordinary share capital, it is not clear how this would be achieved over and above what the Draft Law already provides without changing the fundamentals of an LLC. Government acknowledges that further discussion on this point could lead to a potentially interesting market development for LLCs (although it would presumably be a larger indicator of company status to jurisdictions such as the UK) but given the intention is to cater to users in the US rather than create a substantially new concept, we have not considered this further in this document.

With regard to the size of the North American market in Jersey, the Jersey Finance "Value to Britain" research paper dated October 2016 reported that in 2014 Jersey administered approximately £93 billion of North American sourced corporate or institutional assets and £76bn from North American funds, representing a 15% market share (by comparison non-UK Europe represented 20%). Those figures were estimated in 2012 to be £26bn and £46bn respectively and are expected to have increased since (they also pre-date wider developments in cryptocurrency). Government therefore believes that having the Jersey LLC align more with the US Law caters to such a growing client base (whilst the LLP looks to cater to our UK client base).

Respondent 4 noted that the Consultation refers to the need to make further consequential legislative changes (for example, to the Financial Services (Jersey) Law 1998, Control of Borrowing (Jersey) Order 1958 and the Collective Investment Funds (Jersey) Law 1988) as well as the JFSC needing to amend its Licensing Policy and Jersey Private Fund Guide. These legislative gaps would need filling in order for the LLC to be of use.

Government comment:
*Government has engaged with the Law Draftsman and the JFSC on these matters well before the Consultation was published and will continue to do so should the Amendment Draft Law be enacted. As the closest jurisdictional equivalent, it is anticipated that these legislative gaps will largely follow the path taken for the introduction of the Limited Liability Partnerships (Jersey) Law 2017 (the "**LLP Law**") and therefore would be following an established precedent in Jersey.*

Question 1(d): Do you agree with the approach that a Jersey LLC should be designated as an entity with separate legal personality rather than a body corporate? If not, please explain your reasoning.

Respondent 1 agreed, although noted issues relating to the recognition of segregation of assets and liabilities in foreign insolvencies that led to the adoption of incorporated cell companies ("**ICCs**") in addition to protected cell companies ("**PCCs**"). The Respondent suggested, if the same issue applies to LLCs, that consideration should be given to being able to elect between separate legal personality and corporate status, although notes that consideration can be given to this issue in the future rather than now.

Respondent 2 similarly agreed with the approach taken and that LLPs should be considered the most appropriate analogous entity on which to base LLCs.

Respondent 3 similarly agreed, noting that, whilst designating an LLC as a body corporate would not be determinative for foreign tax purposes, it would likely be regarded as unhelpful.

Respondent 4 provided no comments.

Government comment:
Government agrees with all responses, notes the comparative issue raised by Respondent 1 and agrees this should be considered in due course.

Question 1(e): Do you agree that an LLC should have the right to elect to be treated for tax purposes as either a company or as a partnership? If so, do you believe there should be a default position under law (and if so, do you agree that the default position should be to be treated as a partnership i.e. transparent as per the US Law)?

Respondent 1 agreed to the election and had no comments regarding a default position.

Respondent 2 similarly agreed and had no view on a default position, noting that it would provide the required flexibility for the tax structuring of complex funds or joint ventures. The Respondent also noted it would be a mechanism familiar to US investment managers and would allow them to use Jersey entities to mimic structures they have used successfully in the past.

Respondent 3 did not agree with a tax election, stating that the intention was not entirely clear and that it would not be persuasive for UK taxation purposes. The Respondent stated that the law should remain silent on this point and thereby provide maximum flexibility for the LLC agreement to determine in such a way that works best for the client.

Respondent 4 stated that it did not feel it would be appropriate to include an election as to the status of the LLC on the basis of tax treatment, which could be contrary to its legal status.

Government comment:
As identified by Respondent 2, the tax election is a feature of the US Law and is intended to permit the LLC to choose its tax (and therefore accounting) treatment in jurisdictions that recognise such elections. As explained by the Consultation, this is not to be addressed within the Amended Draft Law. Instead, a "tick box" election made in filings to the Jersey Taxes Office is envisaged. The LLC agreement may therefore still be drafted in such a way as to be helpful in determining tax status for the purposes of UK taxation (and presumably a mirror tax election would be made in Jersey) but (as discussed above) the UK is not the intended market for this legislation.

Question 1(f): Do you agree with an LLC agreement being able to provide for perpetual succession? Please explain the reasons for your response.

Respondents 1 to 3 agreed with the statement, noting that LLCs are often used as carry/investment vehicles with a membership that will change over time. For a Jersey LLC to perform this role it is essential that it should be capable of perpetual succession (with there being no apparent need to have any related statutory trigger for dissolution).

Respondent 4 provided no comments.

Government comment:
Government agrees with the responses.

Question 1(g): Do you agree that it is not necessary for the Draft Law to require that an LLC must "carry on a business" with "a view to a profit" (noting that the LLC agreement may provide otherwise)?

Respondents 1 agreed with the position.

Respondent 2 agreed noting that US LLCs are often used to receive carried interest. Whilst forming an important part of an investment manager's corporate structure, a carry vehicle's role is relatively passive and may not be caught within the definition of "carrying on a business" with "a view to a profit". If it is necessary from a UK tax perspective (for example) for the LLC to "carry on a business" with "a view to a profit", then this can be drafted into the LLC agreement but the flexible approach suggested in the Draft Law is therefore welcomed.

Respondent 3 agreed suggesting the alternative would be unnecessary and unhelpful.

Respondent 4 queried what purpose the LLC may be used for if not for profit and noted that the JFSC would require information relating to the activity of the LLC on an ongoing basis in order to meet international standards.

Government comment:
Government agrees with the Respondents and, with regard to the query raised by Respondent 4 (in addition to any other not for profit purposes) notes the response provided by Respondent 3.

Question 2(a): Should the time at which the LLC agreement is deemed effective be: (a) as drafted i.e. as at the date of the certificate of formation or at another date specified in the LLC agreement (which reflects the US Law); or (b) simply "upon formation" being the time that the registrar issues a certificate of formation which therefore removes the option to specify another date in the LLC agreement? It should be noted that Bermuda has adopted the former whilst Cayman Islands state LLC agreements entered into before filing o nly take effect upon registration (both permitting entry "before, after or at the time of filing").

Respondent 1 stated that it should be as drafted to give maximum flexibility, suggesting that perhaps there should be a requirement that an LLC agreement will be in place by the time the LLC starts its trading or other activities.

Respondents 2 and 3 agreed with (or otherwise had no objections to) the suggested approach.

Respondent 4 raised there needs to be certainty as to the date that the LLC comes into being and therefore this should be on date of the registration certificate.

Government comment:
Government notes and agrees with Respondents 1 to 3.

With regard to the issue raised by Respondent 4, Article 4 provides that the date an LLC comes into existence is the date of registration. The timing of the LLC agreement coming into force, is different (and cannot circumvent Article 4). The LLC agreement is the contractual arrangement between the members (or in the case of an LLC not yet formed, the proposed members). On current drafting (which reflects the US Law), it may be entered into (or otherwise existing) before, after or at the time of the delivery of the declaration and may be made effective on its terms as of the date of formation or at such other date specified in the

LLC agreement. Before the LLC comes into being, the LLC agreement is simply a contract between its parties. If there is no formal written LLC agreement in place at the time of formation (other than the basic agreements to form an LLC etc. – note the LLC agreement can be oral or implied) the default positions under the Amended Draft Law will apply.

The question relates to whether that should be permitted or, for example, should there be a strict requirement under the Amended Draft Law for a formal agreement to be in place upon formation (note Respondent 1 has suggested an alternative of before it starts trading). In light of the above comments, Government has decided to keep the legislation as drafted save to amend the definitions of "authorized person" and "LLC agreement" (and Article 4) to make the above explanation regarding the pre-registration position clearer.

Question 2(b): Do you envisage any issues with the concept that the LLC agreement may give rights to a third party (noting contractual concepts of privity)?

Respondent 1 noted no issues but questioned whether privity should be addressed at all given that the LLC agreement is a statutory form of contract that is binding on the basis of membership rather than execution. The Respondent also raised that Article 3 does not (and should) address, where an LLC agreement confers rights on a third party, whether the consent of the third party would be required to amend those rights. The Respondent envisaged that the LLC agreement would ordinarily provide for this but a default should apply and suggests that such rights may only be varied with the third party's consent.

Respondent 2 expressed caution there may be unintended consequences in allowing third parties to enforce rights even though they are not a party to the agreement, cutting across the concept of privity and requested further clarification. However, the Respondent noted that the mechanisms currently available (as follows in brackets) were sub-optimal and the Draft Law considered an elegant solution. (Currently, it is market practice for third parties to be given rights in Jersey limited partnership agreements (for example) by either: (1) granting the right to the general partner, and the general partner holding the right on trust for the third parties (often indemnified persons); or (2) providing that the rights are subject to the English Contracts (Rights of Third Parties) Act 1999 and specifying that that section of the agreement is governed by English law.)

Respondent 3 requested further clarification but saw no issue with the LLC agreement giving rights and conferring obligations on managers who are not also members on the basis this would appear to be consistent with the position of directors and other officers of a company under its articles of association.

Respondent 4 requested further clarification but raised no issues.

Government comment:
Government agrees that we are dealing here with a statutory form contract, albeit one with the freedom to determine much of the governing provisions of LLC (including the right to give rights to third parties – note the Article states "may"). Notwithstanding, the current drafting reflects the US Law and is included on that basis. As demonstrated above, the concept of giving rights and conferring obligations on third parties is consistent with the practice of the governing documents of existing partnerships and companies; and we agree that the drafting represents the most elegant solution by comparison.

Question 2(c): Do you believe there are any areas in the Draft Law where a default position should be but is not specified (i.e. in cases where an LLC agreement is either silent or for any reason not in force)? If so, please confirm which areas and what position you believe should be made the default and why.

Respondent 1 stated that (in addition to Article 3 above) the default position in Article 38(a) (Assignee right to exercise rights and powers of a member) should be reversed as it is unhelpful as regards taking security.

Government comment:
Government agrees that the reverse may be more helpful for taking security. However, the default position in Article 38 (now 40) has been retained on the basis it is consistent with the US Law position and the general intention (for example, under Article 40, now 42) that the LLC agreement should provide for how assignees become members. Government is mindful that the LLC is (at its core) a contractual relationship between members and wherever possible they should be given the freedom of contract to govern themselves accordingly. With respect to security, Government notes that company articles of association often have standard provisions providing directors with the discretion to refuse to register a transfer shares that lenders require to be disapplied with regards enforcement. If security is to be taken in respect of an LLC interest, a secured party would no doubt be advised to require amendments to the LLC agreement in a similar manner.

Respondent 2 observed that Article 3(4) provides that a member or manager or assignee of an LLC Interest is "bound by the LLC agreement (which shall be enforceable) whether or not the member manager or assignee executes the LLC agreement'. The Respondent noted that often members/managers/assignees do not sign the LLC agreement itself and questioned whether the Article should be amended for clarity to refer to the member or manager or assignee "agreeing to adhere to the terms of the LLC agreement" (or similar).

Government comment:
Government agrees with the spirit of the suggestion but notes that, in addition to the LLC agreement being a statutory form of contract, the LLC agreement is defined as including "any amendments or additions made to". We would consider adherence documents to be covered by such definition. Also in practice, the members upon formation will execute the LLC agreement and all subsequently admitted members (including by assignment) are dealt with by Article 11 (now 13) paragraphs (2) and (3), which provides for this issue in more detail.

Respondent 3 suggested that:

(a) the Amended Draft Law should provide for automatic allocation of profits to members as they arise, subject to contrary provision in the LLC agreement.

Government comment:
Government notes Article 29 (now 31) provides that the profits and losses "shall be allocated among the members… in the manner provided in the LLC agreement"). Whilst this mirrors the US Law, we note the LLP law (which is drafted to adhere to the English law partnership requirements) has a similar provision. We have therefore retained the wording (noting the LLC agreement may provide accordingly).

(b) the LLC itself should not be permitted to be a member under the LLC agreement, as we understand that this will be likely to cause foreign revenue authorities to view the LLC as an entity and therefore not transparent for tax purposes;

Government comment:
Government notes that Article 43 (now 45) provides that any LLC interest acquired by the LLC in itself shall be deemed cancelled and therefore this is effectively already the case. We have, however, provided additional wording in that Article for greater clarity.

(c) the law should provide for a register of LLC members interests to be maintained unless disapplied by election in the LLCA and this will also permit the quasi share capital referenced above to be held on such register;

Government comment:
Please note a register of LLC members is already required to be maintained pursuant to Article 8 paragraph 6(a). In line with our status as a fully compliant jurisdiction with regards to retaining information regarding beneficial ownership and controllers, Government does not intend this to be voluntary (quasi-share capital has also been addressed in Question 1).

(d) the reference to "connivance" in Article 55(1)(a) is regarded as unhelpful and unclear by both ourselves and tax counsel and should be removed;

Government comment:
Government notes that "connivance" is used in other Jersey laws including the LLP Law and the Financial Services (Jersey) Law 1998 (referring to a willingness to allow an offence as opposed to consenting to such offence). We have therefore retained the wording.

Respondent 4 simply reiterated its concern regarding the list of items provided for by Article 58 that have been left to be determined by regulations including accounts, audit, winding up/dissolution, which when fully considered may require change to the LLC Law.

Government comment:
Government took the decision to legislate for the items listed in Article 58 (now 60) separately – not only as it enables further consideration on those issues in due course, but it permitted the Consultation to focus on the substantive parts of the Draft Law (and determine from the response whether the product was desirable). As per our response to Question 1, it is also anticipated that these items will largely follow the LLP Law and would therefore be following an established precedent. Therefore, drafting has been undertaken with this in mind. The separation legislation of certain items (for example, dissolution) was also the subject of other Questions and addressed (for example) below.

Question 3(a): Do you agree with the approach taken above to align the registration process with that of other entities in Jersey or believe it should follow the US Law instead?

Question 3(b): Do you agree that provisions regarding the dissolution and winding-up (and any other related processes) should be legislated separately?

Question 3(c): Do you envisage any issues with the classification of LLCs with regards to any insolvency or similar processes? If so, please provide your reasoning.

All **Respondents** agreed or raised no objection to the approach taken with respect to the registration process for Jersey LLCs and for separate legislation for dissolution and winding up to be drafted in due course, although **Respondent 3** noted that such legislation should not be delayed and **Respondent 4** noted its comments generally in Question 2(c) above).

Government comment:

Government agrees with the Respondents and notes that, as such, legislation is intended to follow that produced for LLPs and we are hopeful that the drafting time will not be significant.

Question 4(a): Do you agree with the omission of the requirement for a US-style registered agent in favour of mirroring established Jersey practices?

All **Respondents** agreed with the omission. However, **Respondent 4** suggested that, in order to satisfy the requirement for nexus/substance in Jersey, LLCs should be required to have a secretary in the same manner as the LLP Law.

Government comment:
As noted in the Consultation, Government is mindful of the need to strike a balance between offering an LLC product that is familiar to US clients and ensuring that such product fits within our existing regulatory framework. Such a balance is integral to Jersey maintaining its position as a leading international finance centre. In practice, Government also envisages that the primary uses of an LLC will dictate that most, if not all LLCs, will seek to engage a local trust company business service provider.

On that basis, and given that a registered agent in the US provides a comparative but arguably more restricted role, Government has decided to incorporate Respondent 4's suggestion of a secretary into the Amended Draft Law. The substantive wording (at Articles 9 and 10) therefore mirrors the LLP Law and consequential amendments to the Draft Law are included on the same basis throughout. Government also notes that the intention to mirror the LLP Law also supports the decision to include a requirement for an LLC secretary.

Question 4(b): Do you have any comments with regards to the Draft Law (or proposed future regulations/orders) providing for a regulated entity to be appointed to provide a registered office or any other services (for example, as a manager)?

Respondents 1 and 3 had no comments and acknowledged that the JFSC would likely expect such a provision.

Respondent 2 suggested that guidance be issued in relation to the activities of both members and managers to the extent they could be carrying on financial services business under the Financial Services (Jersey) Law 1998 in a similar way to the guidance issued by the JFSC in respect of LLPs.

Respondent 4 equally acknowledged the need for the JFSC to consider amending (amongst other things) its Licensing Policy and the Jersey Private Fund Guide.

Government comment:
Whilst the answers to this Question have been somewhat superseded by the incorporation of the provisions for a secretary, Government confirms continues to engage with the JFSC on these points.

Question 4(c): Do you agree that the records of the LLC should be open to all members and managers of an LLC or do you believe this (for example) should be subject to the LLC agreement?

Respondent 1 suggested that the documents listed in Article 8(6) only should be open to inspection by members and managers and all others subject to the LLC Agreement.

Respondent 2 commented that, whilst it agreed in principle that records of the LLC should be generally open to inspection by all members and managers, there should be scope to limit this by the LLC agreement. For example, where financial information might be confidential as between members if the LLC is a carry vehicle, it would be preferable if access to the information prescribed by Articles 8(6)(f), (g) and (h) could be limited by the LLC agreement. Members may also be subject to freedom of information laws in their home jurisdiction that may require them to publish commercially sensitive information received from the LLC.

Respondent 3 also suggested that records should be capable of being withheld from members and/or managers if provided for in the LLC agreement, particularly in private equity transactions where a manager may be required to keep investor information confidential.

Respondent 4 agreed with the drafting, stating that, in the interests of transparency, records should be open to all members and managers to allow members to hold the members/managers to account.

Government comment:
Government agrees with Respondent 4 that, in the interests of transparency, the starting point here should be that records are open to inspection by all members and managers. However, we acknowledge the comments from Respondents 1 to 3 that there may be situations where the members (and managers) wish to limit each other's access to certain information and that they should be able to govern such restrictions between themselves in the LLC agreement. Indeed, we note the US Law takes a similar position. We have therefore amended the Draft law by the insertion of a new Article 8(9), with paragraph (i) reflecting the above and paragraph (ii) reflecting wording taken from the US Law.

Question 5(a): Do you agree with the concept that LLCs should be permitted to create series? Please explain your reasoning.

Question 5(b): Do you agree that LLCs should not be permitted to create series without being required to individually register them (and obtain a separate certificate of formation / appropriate regulatory consents)? If so, do you have any views / preferences on that registration process (for example, should it mirror that of the LLC itself / Jersey cell companies)?

Question 5(e): What (if any) market purposes do you believe the ability to create series would benefit and therefore should be considered when legislating for them (for example, do you believe the ability to create separate series for separate funds would be desirable and therefore the legislation take into account any specific fund law related requirements)?

Respondent 1 agreed that series should be permitted, stating that the ability to create segregated pools of assets and liabilities makes the LLC attractive as an investment vehicle, primarily as a fund vehicle, but not exclusively. The Respondent believed there is clearly a demand in Jersey for investment vehicles that segregate assets (demonstrated by ICCs and PCCs) and the ability to ring-fence assets and create series within LLCs would be desirable from a funds perspective. With regards registration, the Respondent disagreed with a blanket requirement, suggesting that the ability for the LLC to create series without additional registration (and therefore additional cost) as per the US Law LLC would be a major selling point. The Respondent suggested that, if an LLC were used as a collective investment fund, then it would be appropriate to regulate the creation of each series but that should be a matter for funds regulation rather than the Draft Law.

Respondent 2 also agreed that LLCs should be able to create series, stating in its experience US investment managers use series extensively as carry vehicles for numerous funds, permitting them to use "one" vehicle but maintain a division between income streams. The Respondent also noted that LLCs could be used as a holding company to allow a single LLC to hold multiple assets or to be used across multiple structures, as well as useful for joint ventures, general partners and manager vehicles. The Respondent did not necessarily envisage LLCs to commonly be used as fund vehicles themselves although it noted that LLCs in the Cayman Islands and other jurisdictions are used as both feeder and master funds. With regards registration, the Respondent suggested that, in its experience with US LLCs, the flexibility offered by the ability to create series quickly with relatively little administrative burden has made them hugely popular with US investment managers. However, the Respondent noted that without a registration or notification process (and given the flexibility in the Draft Law for each series to have separate legal personality, separate business

purpose and investment objective) there may be a risk of series being created without sufficient consideration being given to the proposed activities of the LLC and each series under applicable law. The Respondent suggested that notification or an annual compliance statement could be considered.

Respondent 3 expressed scepticism regarding the demand for complex series of membership interests/LLCs, believing they would not be used for corporate or structured finance work. It was suggested they may very rarely be used for funds although again, the Respondent struggled to see when. A concern was raised that too much effort may be concentrated in trying to make series work to the detriment of matters such as finalising the insolvency provisions and therefore suggested they be removed and introduced via regulations if there is sufficient demand.

Respondent 4 provided no definitive answer on this point but suggested that if series were to be permitted they must be registered for the purposes of Jersey meeting its international commitments regarding beneficial ownership information and suggested a process similar to that of registering cells. The Respondent also stated it was unsure as to the relationship between the LLC and the series (for example, would it be like an incorporated cell?); and what effect the insolvency of the LLC would have on the series?

Government comment:
Government agrees with Respondents 1 and 2 regarding the potential uses and desirability for series and believes there to be sufficient potential demand to permit their creation. However, we agree with Respondent 3 that such provisions should not delay the Draft Law itself or its regulations. We also agree with Respondent 4 that series (if permitted) must be registered for the purposes of the JFSC collecting beneficial ownership/controller information for exchange at international levels. To permit otherwise may jeopardise Jersey's status as a leading international finance centre.

The provisions regarding series creation has therefore be amended to reflect a registration process similar to the LLC itself. We agree with Respondent 4 that the process for registering cells is helpful in this regard and provides a balance between the need to regulate series accordingly and the commercial advantages of speed and low cost. As the formation (and legal status) of a series would then be dependent on registration, references to its status being achieved by maintaining correct and accurate records and segregating assets from the LLC have been removed. Instead, the series would be required to keep similar records to the LLC itself and failure to do so would simply be an offence. Similarly, the concerns raised regarding the activities of an unregistered series are now addressed as each series would require registration (and therefore separate COBO and potentially, dependent on its activities, further regulation under applicable law).

On that basis, there is clear overlap between series and cells, which are an established concept in Jersey and provide a clear precedent. As a result, and given that (bar some series specific paragraphs) the remaining provisions of Article 10 of the Draft Law essentially seek to apply the law as it relates to LLCs to series, Government believes the mutatis mutandis style drafting of Jersey's cell legislation to be much more suitable and has amended Article 10 (now 12) accordingly.

With regard to the questions raised by Respondent 4, the above affirms that the series can be thought of as akin to a incorporated cell in that it has a separate legal personality from the LLC (although is not a body corporate); and though insolvency is to be addressed by subsequent regulations, we would suggest the insolvency of the LLC should not, in itself, affect the series (which has its own members, managers, assets and liabilities independent of the LLC).

Question 5(c): Do you agree that, as for the LLC, a series should be stated as having separate legal personality without being a body corporate?

Respondents 1 and 2 agreed, with the latter reiterating that the ability to maintain the division between series, whilst managing a single LLC, is a key attraction of the current US LLC regime and something considered to make a Jersey LLC regime similarly popular with investors/investment managers. **Respondents 3 and 4** provided no additional comments.

Question 5(d): Do you believe the naming provisions to provide sufficient notice to third parties (including creditors) that they are dealing with a ring-fenced element of the LLC? If not, what would you suggest instead or in addition to those provisions?

Respondents 1, 2 and 4 agreed or otherwise considered the approach reasonable. **Respondent 3** provided no additional comment.

Question 6: Other than the issues already identified with respect to satisfying transparency criteria in certain jurisdictions, do you envisage any issues with the concept that members may be admitted without either a requirement to contribute or receiving an LLC interest (noting contractual concepts of consideration)?

Respondent 1 commented it envisaged no issues as the Draft Law itself removes the requirement for consideration to be given for membership. The Respondent noted there may well be circumstances why a member should not be required to make a contribution (for example, where an LLC is not for profit or in the case of a subscriber member). However, it

suggested it was not clear why a member would become a member without acquiring an LLC interest (other than in the case of an LLC that is not for profit or a subscriber member).

Respondent 2 commented that, whilst it would be a matter for the draftsman of the LLC agreement and Jersey lawyers, if members can be admitted without either a requirement to contribute or receive an LLC interest, there could be a lack of *cause* under Jersey customary law. The Respondent also queried whether there would be a corporate benefit for the members/manager in entering into the LLC agreement.

Respondent 3 commented that it saw no issue why membership interests could not be granted without a contribution. However, it felt the Draft Law should provide for the formal admission of a member on entry into the register of members and issue of a certificate evidencing membership, subject to the ability to dispense with either requirement under the LLC agreement, as this would assist with identifying members who either make no contribution or a non-cash contribution

Respondent 4 queried how this would work in relation to existing members who have provided some form of consideration and how a member can be admitted without consideration. The Respondent further queried whether members without an interest would be a separate category of members and questioned whether the three-tier test for beneficial ownership had been considered in this regard.

Government comment
Government agrees with Respondent 2 that questions of cause under Jersey customary law (and corporate benefit) should be addressed by the draftsman of the LLC agreement and Jersey lawyers in each specific circumstance but notes the status of the LLC agreement as a statutory form of contract and agrees with Respondent 1 regarding consideration on the same basis.

Similarly, Government suggests it would be for the market to make use of the ability to admit members without the need for contribution or the right to receive an LLC interest. However, we note the drafting reflects the US Law provisions and agree with Respondent 1 that, in the first instance, not-for-profit LLCs (noting that in some cases carry vehicles may qualify as such) and subscriber members may possibly both make use.

The suggestions made by Respondent 3 are discussed in the responses to Questions 1 and 2, but essentially the drafting permits the members to dictate the terms of admission. Similarly, we believe that the queries raised by Respondent 4 are largely answered by the above. However, with regard to the query on whether these provisions would create a separate "category" of members, we would suggest that it would not but clearly, for example,

the ability to vote and receive distributions would (subject to the LLC agreement) be restricted (given the defaults for both are calculated with regard to contributions on a pro rata basis). It is a matter for industry, but we would envisage that as a matter of practice this would be dealt with by the LLC agreement. As to the application of the three-tier test beneficial ownership test, any member without a contribution or an LLC interest would be the same as any company shareholder holding less than the requisite shareholding under that test. However, if a member was deemed to exercise control, they would need to be identified as controllers in the same way, regardless of their ownership status. If neither applied then it would be the same as a minority shareholder with no control. We believe this to be consistent with the application of the test generally, although we expect the JFSC to issue guidance in due course.

Question 7: Do you agree that the default voting position for members should be in proportion to their interest in the profits of the LLC as per the US Law (and for written resolutions to be passed by that same majority) rather than by other method (and noting that the LLC agreement may provide otherwise)?

Respondent 1 agreed that the position should mirror the US Law however suggested the drafting could be made clearer (with specific amendments proposed). The Respondent also suggested that the sub-paragraphs of Article 14 on voting (and Article 13 regarding meetings) should be expressed to apply (subject to the LLC agreement) equally to classes. The Respondent further raised that the default position in Article 14(1) permitting class rights to be amended without the consent of the class members affected appeared odd, as there would be room for abuse in cases where LLC agreements do not address the point or are badly drafted.

Respondents 2 and 3 agreed that the position should mirror the US Law.

Respondent 4 made a similar point to Respondent 1 regarding classes when commenting on the series provisions for Question 4 (i.e. that they seemed less detailed than those applying to classes of series and should be updated) and queried how a member's interest in the LLC's profits would be quantified if they have not provided a contribution.

Government comment:
Government agrees with Respondents 1, 2 and 3 that the provisions should mirror the US Law but has reviewed the amendments suggested to Article 14 (now 16) by Respondent 1 and agrees they provide greater clarity. The wording has been amended on that basis (as well as to specifically include reference to consents).

Equally, Government agrees with Respondents 1 and 4 regarding the class provisions and the former's proposal of adopting a company-style mutatis mutandis application of provisions for votes and meetings of shareholders to vote and meetings of classes. Article 12 (now 14) has therefore been amended to reflect.

With regard to the position in Article 14(1) (now 16(1)), Government believes this to not be a default position, as it includes the word "may" and instead simply permits the LLC agreement to include such a provision. We have therefore retained on the basis it is a feature of the US Law and therefore familiar to those who use it.

In response to Respondent 4's query, on the wording of Article 14 (now 16), a member that has not provided a contribution (and therefore prima facie has no rights in the profits of the LLC) would simply have no voting rights. If, however, this resulted in no members being entitled to vote, members would be entitled to vote with decisions made by a simple majority in number (now made clearer in the amendments incorporated above). This is, of course though, a default position and therefore subject to the LLC agreement providing otherwise.

Question 8(a): Do you agree (or envisage any issues with the drafting) that subject to the LLC agreement insolvency should trigger the cessation of membership?

Respondent 1 raised that Article 15 (now 17) does not state whether a consequence of ceasing to be a member on insolvency is the forfeiture of economic rights attaching to the member's LLC interest for the purposes of the anti-deprivation principle. The Respondent suggested tying this provision in with Article 32 (now 34) to provide that a member who dies or is insolvent is to be treated as if they had resigned, as this would make clear that an LLC interest is not forfeited (or alternatively the anti-deprivation rule should be expressly disapplied).

Respondent 2 provided no comments.

Respondent 3 agreed with the principle but queried why it would be a default when it is not a trigger for LLPs or companies.

Respondent 4 commented that insolvency should trigger the cessation of membership and management rights.

Government comment:
Government agrees with Respondent 3 and (subject to the LLC agreement providing otherwise) Respondent 4. Therefore, with regard to the anti-deprivation issue raised by

Respondent 1, Government agrees with the proposal that insolvency should trigger resignation rather than the alternative. The Amended Draft Law reflects this accordingly.

Question 8(b): Do you agree (or envisage any issues with the drafting) that subject to the LLC agreement each member should have the authority to bind the LLC (noting below that the management of the LLC may vest in managers (where appointed) or with a specified group of members if so specified in the LLC agreement)?

Respondent 1 suggested that perhaps Article 17 (now 19) should provide that, subject to the LLC agreement, a member shall have the authority to bind the LLC if no manager has been appointed or holds office, as this would marry up better with Articles 19 (now 21) paragraphs (4) and (5).

Respondent 3 similarly agreed with each member being able to bind the LLC, subject to the LLC agreement (which may permit managers to be approved but also allow members to be excluded from being able to manage or bind the LLC).

Respondents 2 and 4 provided no further comments.

Government comment:
Government agrees with Respondents 1 and 3 and has included the suggested wording in the Draft Amending Law.

Question 9: Given that the definition of "manager" includes "a member in whom the management of a limited liability company is vested", are there any activities that you believe should be specifically excluded as "management business" so as to avoid a member being classified as a manager simply by partaking in such tasks? If so, do you believe the Draft Law to be the proper place for such activities are do you believe that should be housed in activity specific regulation? No such exclusions exist in the US Law but, for example, we note section 6A of The Legislative Reform (Limited Partnerships) Order 2015 of England and Wales provides that a limited partner in a private fund limited partnership is not to be regarded as taking part in the management of the partnership business merely because the limited partner does anything that is under subsection (2) therein a permitted activity, which in turn includes taking part in decisions about the variation of the partnership agreement and certain investment decisions.

Respondent 1 commented that the issue generated by the drafting referred to in this question could be avoided by deleting the offending words in the definition of "manager" and adding a provision to Article 19 (now 21) to the effect that a member may be a manager.

Respondent 2 did not consider that excisions from "management business" should be necessary, given Article 16 (now 18) and that the liabilities of both members and managers are limited. The Respondent noted this is contrary to the UK position for private fund limited partnerships because in that scenario a limited partner who takes part in management activities is at risk of losing its limited liability status.

Respondent 3 echoed our observations regarding no such exclusions in the US Law and the position with regard to UK LPs.

Respondent 4 simply observed this would need to be carefully considered in relation to what amounts to financial services business for the purposes of the Financial Services (Jersey) Law 1998.

Government comment:
Government agrees with the Respondents generally and with Respondent 1 regarding the definition of manager. This has been updated in the Amended Draft Law. However, the amendment regarding Article 19 (now 21) has not been included as it is already covered by Article 2(7).

Question 10(a): Other than the issues already identified with respect to satisfying transparency criteria in certain jurisdictions, do you envisage any difficulties in the terminology used with respect to contributions? If so, please explain.

Respondent 1 suggested that it is not clear why there is a need to refer to a promissory note, as that would engages the formalities of the Bills of Exchange Act and suggested it is simply deleted and replaced with "undertaking".

Respondents 2, 3 and 4 had no further comments.

Government comment:
Government agrees with Respondent 1 and has replaced the wording in the Amended Draft Law, as suggested.

Question 10(b): Do you believe the Draft Law should include the ability of creditors to enforce original obligations (or that it should be subject to any specific limitations)? If not, please provide your reasoning.

Respondent 1 commented that, typically, facility agreements will make amendments to constitutional documents on an event of default, which should be enough of a deterrent to prevent the sort of amendments to which this provision is directed and therefore no need for it (this also going to the privity of contract issue raised earlier). However, the Respondent noted that, if this provision is a feature of the US LLC law with which the US market is familiar, it envisaged no harm in taking a consistent approach.

Respondent 2 had no comments.

Respondent 3 agreed that it should be included on the basis that, if creditors are not able to do so, or require the LLC to do so, then it would be difficult to see how, for example, financing could be extended to an LLC.

Respondent 4 commented yes, as any limitations need to be transparent to all parties.

Government comment:
Government agrees with the Respondents generally and has retained the wording.

Question 11: Do you envisage any issues with adopting the US Law position with regards to distributions as drafted i.e. that the LLC is simply required to be solvent at the time of the distribution and for members to be liable to return distributions only where those members had actual knowledge that the LLC was insolvent at the time?

Respondent 1 raised no issues.

Respondent 2 agreed with the approach taken in the Draft Law noting that, in practice, it would envisage the LLC agreement to contain a contractual clawback mechanism including as may be required by potential lenders.

Respondent 3 also raised no issues with regards to adopting the US position, noting that it should be helpful for arguing that an LLC is transparent for foreign tax purposes.

Respondent 4 suggested that the provisions should mirror those for LLPs or companies, noting that the concept of "actual knowledge" is not adopted in other product laws in Jersey and that it was unsure as to how such provisions would interact with Article 24 (now 26) including regarding reliance on information.

Government comment:

*Government agrees with Respondent 4 that we should be conscious of the need for LLCs to fit within our statutory framework of existing products, although we are equally conscious of the intention to provide an LLC that is familiar to users of the US Law version (as noted by the other Respondents). The solvency test in the LLC Law is in fact closest to that for Jersey separate limited partnerships ("**SLPs**"), although the latter includes a clawback period of 6 months with actual knowledge not a requirement. We have therefore amended the Draft Law to mirror SLPs (noting that the LLC agreement may provide for a longer period) and believe this achieves the desired balance between the two positions.*

Question 12: Do you agree that the requirement of the LLC to be solvent at the time it intends to acquire an LLC interest should be included or do you believe the Draft Law should instead reflect the US Law (which has no such requirement)?

Respondent 1 agreed there should be a solvency requirement.

Respondent 2 equally agreed with the suggested approach.

Respondent 3 had no objection and envisaged it would be required by the JFSC.

Respondent 4 suggested that these provisions should mirror LLPs or companies.

Government comment:
Government notes the responses with thanks. The wording has been retained on the basis it is consistent with the solvency requirement adopted for LLC distributions at Article 37.

Question 13: Do you believe there are any material issues with LLCs being said to be treated as partnerships except as prescribed in the Draft Law (or related legislation) notwithstanding their name refers to them as companies? If so, please provide details.

Respondents 1 and 2 stated no and provided no comments respectively.

Respondent 3 commented that it felt very strongly (and had confirmed the same with US/UK counsel) that LLP/partnership customary law should not be stated as expressly applying in the law to LLCs. Instead, the Respondent suggested that, given the general trend to follow US Law, the Draft Law should be silent on this point. This would then leave it open to advisers and courts to follow whatever sources considered appropriate, be they US Law, Jersey/UK LLP laws, or partnership law, depending on the genesis of the particular Article. The Respondent suggested that it would be confusing for advisers if the law originated as US

Law but the Draft Law stated that partnership law was to be applied - why not look to Delaware case law where relevant?

Respondent 4 queried whether relevant third parties would understand this.

Government comment:
This is an issue to which Government gave much thought in the original drafting instructions. US LLCs are clearly a hybrid creature of US statute rather than being a corporate (being our understanding of a company) or a partnership. However, that does not necessarily help Jersey as to where it fits within its existing framework. Although silence was considered an option, Government felt that Jersey lawyers and the Royal Court would benefit from a statutory policy position which confirms more directly the intention of the drafting (as seen throughout) being to acknowledge LLPs as the closest jurisdictional equivalent of LLCs and therefore the customary law of partnerships as relevant. However, the Article clearly states that partnership customary law only applies so far as inconsistent with the express provisions of the Draft Law. The reference should therefore not contradict any of its provisions; nor (for the purposes of interpreting those provisions) would it prevent a court from ruling (or Jersey lawyer advising) that other sources relating to the source material (including the US Law) should be taken into account. Jersey law does of course treat UK law as persuasive notwithstanding such references in other product laws. US Law related sources could (and would, no doubt) be similarly treated where appropriate. However, Jersey law should be given precedence. It was also felt that, whilst not the immediate intention of the Draft Law as discussed earlier, the provision may assist any argument with the UK that a Jersey LLC could be transparent for tax purposes.

With regards to third parties, Government cannot, of course, speak for their understanding (and any such third parties should seek appropriate legal advice) but we are hopeful the detail provided in the Consultation, this document and all further guidance issued by (for example) the JFSC in due course will be helpful.

Question 14(a): Do you believe it agreeable that the LLC agreement should have the freedom to determine all duties (fiduciary or otherwise) of managers (which includes managing members) other than a general duty to act in good faith (which may be restricted or expanded); or (for example) should duties be mandatorily included via legislation (for example, aligning to the position for directors in Articles 74-76 of the Companies Law and customary law)? If the latter, which duties do you believe should be included?

Question 14(b): Do you believe it otherwise agreeable that members (when not engaging in management) may similarly owe no duties and may vote contrary to the interests of the LLC, subject to the LLC agreement?

Respondent 1 suspected in practice that a higher duty for managers would typically be included in an LLC agreement along the lines of Article 74(1) of the Companies (Jersey) Law 1991 but stated no objection to the drafting (although it queried what the parameters of good faith are), nor had any objections with regards to the drafting for members.

Respondent 2 considered that the LLC agreement should have the freedom to determine all duties as this would follow the approach familiar to most international investors and provide a degree of flexibility and certainty to non-Jersey investors / investment managers that the duties they will be bound by are contained in the documents to which they are a party.

Respondent 3 suggested that, other than a general duty to act in good faith, the duties of managers and members should be determined entirely by reference to the LLC agreement on the basis that LLCs will be investment vehicles for highly sophisticated parties, who should be free to determine the nature and extent of such obligations amongst themselves. The Respondent stated it did not anticipate LLCs being used by local residents for trading business or any other such purposes and, to the extent LLCs do seek investment from non-sophisticated parties, it would be open to the JFSC to impose further safeguards when considering the appropriate applications for consent.

Respondent 4 expressed concerns regarding the drafting and queried what rights members have under the LLC Law to remove a manager. In its view, the ability to restrict good faith should not be permitted and there should be mandatory legislation dealing with fiduciary duties akin to Article 74-76 of the Companies (Jersey) Law 1991 or (for example) or the UK Companies Act 2006. The Respondent stated the Draft Law needs to be clear regarding distinction between management and non-management members, noting that without a manager, members are responsible for management (and therefore liable). Taking this analysis further, the Respondent queried how management by the members would work if they owed no duty either to each other or to the LLC.

Government comment:
Government notes that the US Law prohibits restricting the duty of managers to act in good faith. The wording used in the Draft Law instead reflects the Cayman Islands LLC. This is because, whilst the US Law promotes so far as possible the principles of freedom of contract, good faith is typically included as a feature of US contract law. By comparison, the principle of freedom of contract in English law (to which the Crown Dependences and Overseas

Territories have closer ties) means that all duties (including good faith) are typically at the discretion of the parties. For example, subject to the LLP Law, the duties of partners in an LLP are to be governed by the LLP agreement with no express duty of good faith in the legislation (as opposed to the duties of directors, which are typically codified).

In deciding the appropriate measures for Jersey LLCs, Government has noted that LLCs have the clear freedom to choose a management structure that is more akin to that of companies (via managers) or partnerships (via members). Accordingly:

(a) as managers can be thought of as akin to directors, we believe on reflection they should have a basic duty when acting in that capacity along the lines of the duty to act honestly and in good faith under Article 74(1) of the Companies (Jersey) Law 1991. Accordingly the wording with regards to the duties of managers has been amended to reflect that provision (and, in doing so, Government notes this actually brings the Jersey LLC more in line with the US Law that the previous drafting); and

(b) as members can be thought of as partners in an LLP, whose rights and duties are governed by the LLP agreement, we believe members should be able to freely determine rights and duties between themselves (including where no managers are appointed and management vests in the members) via the LLC agreement. The wording in Article 47 of the Amended Draft Law therefore now reflects Article 13 of the LLP Law.

With regards to the specific queries raised by the Respondents:

- *the parameters of good faith as far as managers are concerned would in light of the above be analogous to that of directors in Jersey;*

- *we agreed with Respondent 4 that there should be a default method of removing a manager and have included this in Article 21 of the Amended Draft Law;*

- *given the amendments contained in the Amended Draft Law (including to the definition of manager), Government believes there to be a clear distinction as to where management vests via Article 21 (as noted by the Respondent) and the provisions relating to members / managers, with the duties owed by them reflecting whether the LLC is structured more like a company (with managers acting akin to directors) or an LLP (with members acting akin to partners); and*

- *with regards to how management works where it is vested in members and they owe no duties to each other or the LLC, this is only the default position, it is subject to the LLC*

agreement and mirrors the intention of LLPs to give members the freedom of contract to determine their respective rights and duties.

Specific drafting amendments

In addition to the above comments on the questions raised, some Respondents suggested specific amendments to the wording of the Draft Law. These (in addition to some other minor drafting amendments and updating of cross-references) have been addressed as follows:

Article	Suggested amendment	Government comment
Definition of "contribution"	Amend "money's" to "monies".	Agreed and amended.
Definition of "LLC interest"	Insert "of" after "distributions".	Agreed and amended.
2(2)	Add "(but it is not a body corporate)" at the end of the sentence.	Agreed and amended.
2(6)	Why should an LLP, SLP or another LLC be able to be a member or manager of an LLC?	This provision was not intended to be to the exclusion of all other entities. We have deleted (rather than added an exhaustive list) to avoid such confusion.
10(1)	It is not readily apparent what the difference is between series, classes and groups. We would suggest that "comprised" is inserted after the word "series" to be consistent with Article 10(12).	Agreed and amended.
10	It is not clear why it is necessary to use the formulation "associated with" rather than the simply "of" which is also used (whether in relation to series, assets or managers). The different wording suggests that there is a different meaning whereas Article 10(9) says there is not. If we get rid of the "associated with" formulation and just use "of", it is simpler, more direct and Article 10(9) can be deleted.	Agreed and amended.
10(5)	It seems that the effect of the opening paragraph is that segregation will only be effective if records maintained for any series	This suggestion has been superseded by the decision to the mirror provisions of cell companies

	account for the assets of such series separately from the assets of the LLC or another series. Accounts and records may contain errors or omissions. Article 10(5) should presumably also provide that if an asset is not accounted for in the records of a series it will not affect the segregation of the other assets of the series that are.	(and tie existence to registration rather than accuracy of accounting).
10(5)(a)	Insert "whether arising in contract, tort or otherwise" after "existing" to mirror Article 16(1).	Agreed and amended.
10(6)(c)	Replace "to be" with "from being".	Agreed and amended.
10(7)	This permits the assets of a series to be held in the name of the LLC. This seems to be somewhat at odds with Article 10(5) so that it is necessary to account for series assets separately, but not to hold title to series assets separately. It would be preferable if series assets had to be held in the name of the series (unless not permitted by applicable law); it will then be apparent who the true owner is. Apparent ownership and actual ownership should coincide. Similarly, a nominee should be required to hold for the relevant series if this is the beneficial owner. This will also help make taking security more straight forward.	This suggestion has been superseded by the decision to mirror cell companies, although we have additionally removed the reference to the LLC to avoid confusion.
10(22)	After "member" in line 3 add "of the series".	This provision has been deleted in its entirety as the provisions relating to the LLC general apply to such series.
10(26)	Why is the second half of this provision required at all?	This provision has been deleted in its entirety as the provisions relating to the LLC general apply to such series.
10(27)	This would be simpler and more direct if it said "a member of a series shall cease to be a member of such series and to have…LLC interest in such series."	This provision has been deleted in its entirety as the provisions relating to the LLC general apply to such series.

10(28)	Replace "associated with" with "a member of" in the first two instances and "of" in the third.	This provision has been deleted in its entirety as the provisions relating to the LLC general apply to such series.
11(2)(b)	Amend to "an assignee" in the first line.	Agreed and amended.
15(1)	The proviso "subject to an LLC agreement, or with the consent of all members, a member" should be deleted and inserted at the beginning of Article 15(1) in the following way: "Subject to an LLC agreement or unless all members otherwise consent, a person…". The current wording does not make it clear what members would be consenting to.	Agreed and amended.
15	The references to "member's properties" should be to "member's property" or "member's assets".	Agreed and amended.
15(3)	A body corporate, trust or any type of entity does not have personal representatives. It is not clear who could act for a body corporate, trust or entity after its dissolution since, by definition, it would no longer exist.	Agreed and deleted.
16(1)	This should read "and neither a member nor a manager of a limited liability company nor a member nor a manager of a series shall be personally liable…or acting as a manager of the limited liability company or series."	This provision has been deleted in its entirety as the provisions relating to the LLC general apply to such series.
33(2) and 33(3)	The wording does not work. It should read "provided that the quotient resulting from dividing the value of the distributed asset by the value of all of the assets of the limited liability company is not greater than the quotient resulting from dividing the value of the member's interest by the value of the interests of all members". In addition, the "to the extent that" wording is inappropriate and "if" should be used instead. It is, or should be, an all or nothing test. "To the extent that" suggests otherwise. Ditto for 33(3).	We agree that the wording is confusing (as does commentary on the US Law). Whilst we have not accepted the suggested amendments, we have amended 33(3) to give effect to what we believe from commentary to be the intention here (and deleted 33(2) as it is no longer necessary in light of those amendments).
37	Insert "already" after "not".	Agreed and amended.

38(a)	This is the wrong default position and it is unhelpful as regards taking security. Delete "not". Also Article 38(a) and (b) are not consistent.	This is discussed in response to Question 2(c).
40(1)	This should provide that a member ceases to be a member when the assignee to whom the member has assigned its LLC interest becomes a member.	This is discussed in response to Question 2(c).
40(1)	This provides that a security interest granted by a member does not cause it to cease to be a member. What if a security assignment of the member's LLC interest is taken?	This is discussed in response to Question 2(c).
41(b)	The spacing needs correcting.	Agreed and amended.
43	This should also be expressed to apply to series, classes and groups as well as the LLC itself.	This is addressed in Question 7.
45(2)(b)	The words "or any member" seem to be misplaced and do not make any sense. Should Article 45(2) make it clear that is does not apply where a member is acting as manager?	This has been superseded by the outcome of Question 14.
46(6)	Insert a carriage return.	Agreed and amended.
47(4)	Refer to time specified in JFSC notice.	Agreed and amended.
48	Include an equivalent of Article 28(6) of the LLP Law.	Agreed and amended.
50	Include an equivalent of Article 29(3) of the LLP Law.	Agreed and amended.
52	Amend to reflect LLP equivalent provisions (which reflect Dalemont judgment and subsequent amendments to the Foundations law).	Agreed and amended.
55	Insert "neglect" to reflect LLP Law.	Agreed and amended.
55(1)	Insert "is" after "Law".	Agreed and amended.
58	The regulation making power should extend to demergers and continuances in and out of Jersey.	The list is not intended to be exhaustive but we have included for good order.

Amendments to the Security Interests (Jersey) Law 2012	Unless the Financial Services (Jersey) Law 1998 is amended to bring LLC interests within the definition of investments in Schedule 1, the draft LLC law should provide for the amendment of the definition of "investment security" in the Security Interests (Jersey) Law 2012 to extend its application to LLC interests. This will permit security to be taken by way of possession or control of LLC interests.	Consequential amendments to other legislation will be considered and made in due course should the Amended Draft Law be enacted.
Amendments to the Financial Services (Jersey) Law 1998	The Financial Services (Jersey) Law 1998 should be amended to extend to LLCs the benefit of equivalent exemptions from the requirement to register applicable to companies.	Consequential amendments to other legislation will be considered and made in due course should the Amended Draft Law be enacted.
Amendments to the Power of Attorney (Jersey) Law 1995	The Power of Attorney (Jersey) Law 1995 should be amended so that powers of attorney and security powers of attorney can be granted by LLCs.	Consequential amendments to other legislation will be considered and made in due course should the Amended Draft Law be enacted.

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