

STATES OF JERSEY



DRAFT INCORPORATED LIMITED PARTNERSHIPS (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 5th April 2011
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT INCORPORATED LIMITED PARTNERSHIPS (JERSEY) REGULATIONS 201-

REPORT

The Incorporated Limited Partnerships (Jersey) Law 2011 (“**the Law**”) was approved by the States on 25th May 2010. When it comes into force, the Law will allow for the establishment of a new type of Jersey vehicle, the Incorporated Limited Liability Partnership (“**ILP**”).

An ILP will be a body corporate, having perpetual succession. 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, in particular regarding the limited liability of the limited partners. Secondly, perpetual succession means that those dealing with the ILP can be confident that it will continue to exist and be held accountable for its obligations.

While the general partner(s) will continue to be liable for the ILP’s debts, this liability will be a secondary one, only arising if the ILP itself defaults. The general partner(s) will act as an agent for the ILP 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.

The Draft Regulations

Under Article 21 of the Law, the States may make Regulations providing for the winding up and dissolution of solvent and insolvent incorporated limited partnerships.

The Draft Regulations are based on the Companies (Jersey) Law 1991, which regulates the winding up and dissolution of companies under that Law. In principle, the Draft Regulations therefore follow the scheme of the 1991 Law.

The Draft Regulations also provide for the dissolution of incorporated limited partnerships that no longer appear to be in business. These provisions follow those that apply under the 1991 Law to companies.

The Regulations are arranged in the following way –

- Part 1 deals with preliminary matters, relating to the interpretation of the Regulations.

- Part 2 provides for a voluntary winding up. As in the case of companies, this is called a summary winding up.
- Part 3 provides for the Royal Court to wind up an incorporated limited partnership on just and equitable grounds, or if it considers it in the public interest to do so.
- Part 4 provides for the winding up of an incorporated limited partnership by its creditors.
- Part 5 contains provisions that apply to more than one kind of winding up.
- Part 6 contains other provisions.

The Draft Regulations are expressed to come into force on the same day as the Incorporated Limited Partnerships (Jersey) Law 2011, so as to complete the scheme of that Law.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these Regulations.

Explanatory Note

These Regulations are intended to be made under the Incorporated Limited Partnerships (Jersey) Law 2011. They provide for the winding up and dissolution of incorporated limited partnerships.

The Regulations are based on the Companies (Jersey) Law 1991, which regulates the winding up and dissolution of companies under that Law. In principle, they follow the scheme of the 1991 Law.

They also provide for the dissolution of incorporated limited partnerships that no longer appear to be in business. These provisions follow those that apply under the 1991 Law to companies.

The Regulations are arranged in the following way –

Part 1 deals with preliminary matters, relating to the interpretation of the Regulations.

Part 2 provides for a voluntary winding up. As in the case of companies, this is called a summary winding up.

Part 3 provides for the Royal Court to wind up an incorporated limited partnership on just and equitable grounds, or if it considers it in the public interest to do so.

Part 4 provides for the winding up of an incorporated limited partnership by its creditors.

Part 5 contains provisions that apply to more than one kind of winding up.

Part 6 contains other provisions.

The Regulations are expressed to come into force on the same day as Article 3 of the Incorporated Limited Partnerships (Jersey) Law 2011, so as to complete the scheme of that Law.



Jersey

DRAFT INCORPORATED LIMITED PARTNERSHIPS (JERSEY) REGULATIONS 201-

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Jersey

DRAFT INCORPORATED LIMITED PARTNERSHIPS (JERSEY) REGULATIONS 201-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 21 of the Incorporated Limited Partnerships (Jersey) Law 2011¹, have made the following Regulations –

PART 1

INTRODUCTION

1 Interpretation

In these Regulations, unless the context otherwise requires, “the Law” means the Incorporated Limited Partnerships (Jersey) Law 2011².

2 Proceedings of partners

- (1) Where these Regulations provide for a question to be determined by the general partners of an incorporated limited partnership or by all of partners of the partnership, and the partnership agreement specifies how they are to do so, the question shall be determined in accordance with the partnership agreement.
- (2) Where the partnership agreement does not specify how they are to determine the question, a reference in these Regulations (other than in Regulation 37) to its determination is to a decision to which the general partners or the partners (as the case may be) agree unanimously.
- (3) Where the partnership agreement does not specify how the partners are to determine a question at a meeting under Regulation 37, it may be determined by (but only by) the unanimous agreement of each of the partners who is present personally or by his or her proxy and is entitled to vote.

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- (4) Where the partnership agreement specifies the quorum for the purposes of a meeting of the partners of an incorporated limited partnership under Regulation 37, the number so specified is the quorum.
 - (5) Where the partnership agreement does not do so, the quorum for the purposes of the meeting is –
 - (a) 3 partners (present personally or by their proxies), if there are not fewer than 3 partners who are entitled to vote; or
 - (b) all of the partners (present personally or by their proxies) who are entitled to vote, if there are fewer than 3 partners entitled to vote.

PART 2

SUMMARY WINDING UP

3 Application of Part 2

- (1) This Part applies to the winding up of any of the following incorporated limited partnerships –
 - (a) a partnership that has no liabilities;
 - (b) a partnership that has liabilities that have already fallen due, or that will fall due within 6 months after the commencement of the winding up, being liabilities that in either case it will be able to discharge in full within 6 months of the commencement of the winding up;
 - (c) a partnership that has liabilities that will arise more than 6 months after the commencement of the winding up, being liabilities that it will be able to discharge in full as they fall due; or
 - (d) a partnership that has a combination of the liabilities mentioned in sub-paragraphs (b) and (c).
- (2) However, this Part does not apply to an incorporated limited partnership in respect of which a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990³, and has not been recalled under that Law.
- (3) A winding up under this Part is a summary winding up.

4 Procedure for summary winding up

- (1) An incorporated limited partnership may be wound up under this Part in the manner set out in this Part.
- (2) The general partners of the incorporated limited partnership shall make a statement of solvency signed by each general partner stating that, having made full enquiry into the partnership's affairs, each general partner is satisfied that –
 - (a) the partnership has no assets and no liabilities;
 - (b) the partnership has assets and no liabilities;
 - (c) the partnership will be able to discharge its liabilities in full within the 6 months after the commencement of the winding up;

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- (d) the partnership has liabilities that will fall due more than 6 months after the commencement of the winding up that it will be able to discharge in full as they fall due; or
 - (e) both sub-paragraphs (c) and (d) apply to the partnership.
- (3) The general partners shall, within 28 days after the statement of solvency has been signed by them, each sign a written memorandum that the partnership be wound up summarily.
 - (4) A copy of that written memorandum shall be delivered to the registrar within 21 days, together with the general partners' statement of solvency.
 - (5) A general partner shall be guilty of an offence if –
 - (a) he or she signs a statement of solvency when having no reasonable grounds for making the statement; and
 - (b) the statement is subsequently delivered to the registrar.
 - (6) A person who is guilty of an offence under paragraph (5) shall be liable to imprisonment for 2 years and a fine.

5 Commencement of summary winding up

A summary winding up under which assets of an incorporated limited partnership are to be distributed commences when the general partners each sign, in accordance with Regulation 4(3), a written memorandum that the partnership be wound up summarily.

6 Effect on status of partnership

- (1) The corporate state and capacity of an incorporated limited partnership continue after the commencement of the partnership's summary winding up until the partnership is dissolved.
- (2) However, the incorporated limited partnership's powers shall not be exercised except –
 - (a) to realize its assets;
 - (b) to discharge its liabilities; and
 - (c) to distribute its assets in accordance with Regulation 10 or 11.
- (3) Paragraph (2) is subject to Regulations 16 and 59.

7 Appointment of liquidator in summary winding up

- (1) An incorporated limited partnership may, on or after the commencement of its summary winding up, appoint a person to be the liquidator for the purposes of the winding up.
- (2) On the appointment of a liquidator, the general partners cease to be authorized to exercise their powers in respect of the incorporated limited partnership and those powers may be exercised by the liquidator.
- (3) Paragraph (2) is subject to –

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- (a) the terms of appointment of the liquidator, or any subsequent agreement between the general partners to provide otherwise; and
 - (b) Regulations 10, 11 and 12.
- (4) Article 4 of the Law applies to a liquidator appointed under this Regulation, in respect of the information to which Article 4(3)(c) of the Law refers, as it applies to a general partner.

8 Registration of statement of solvency

The registrar shall register a statement of solvency delivered under Regulation 4.

9 Dissolution of partnership with no assets or liabilities

On the registration by the registrar of a statement of solvency delivered under Regulation 4 that the incorporated limited partnership has no assets and no liabilities, the partnership is dissolved.

10 Partnership with assets but no liabilities

On the registration by the registrar of a statement of solvency delivered under Regulation 4 that the incorporated limited partnership has assets and no liabilities, the partnership shall forthwith proceed to distribute its assets among the partners according to their rights or otherwise as provided by the partnership agreement.

11 Partnership with liabilities

- (1) On the registration by the registrar of a statement of solvency delivered under Regulation 4 that the incorporated limited partnership has liabilities, the partnership shall proceed in accordance with this Regulation.
- (2) The partnership shall discharge, within 6 months after the commencement of the winding up, such of those liabilities as have fallen due before the end of that period.
- (3) If at the end of that period of 6 months there are no remaining liabilities, the incorporated limited partnership may then distribute its remaining assets among the partners according to their rights or otherwise as provided by the partnership agreement.
- (4) If at the end of the period of 6 months after the commencement of the winding up, there are remaining liabilities that will fall due after the end of that period, paragraphs (5) and (6) shall apply.
- (5) If the general partners –
 - (a) reasonably believe that the incorporated limited partnership is able to pay those remaining liabilities as they fall due; and
 - (b) retain sufficient of the partnership's remaining assets to discharge those remaining liabilities as they fall due,

the partnership may in the meantime proceed to distribute its other assets among the partners according to their rights or otherwise as provided by the partnership agreement.

- (6) On discharging in full the remaining liabilities to which paragraph (5) refers, the incorporated limited partnership may then distribute its remaining assets among the partners according to their rights or otherwise as provided by the partnership agreement.

12 Dissolution of partnership with assets or liabilities

- (1) As soon as an incorporated limited partnership has completed the distribution of all of its assets in accordance with Regulation 10 or 11, it shall deliver to the registrar a statement –
- (a) signed by each general partner, if the distribution was not completed by a liquidator appointed under Regulation 7; or
- (b) if the distribution has been completed by a liquidator appointed under that Regulation, signed by the liquidator,

stating that each general partner or the liquidator (as the case may be), having made full enquiry into the incorporated limited partnership's affairs, is satisfied that the partnership has no assets and no liabilities.

- (2) The registrar shall register the statement.
- (3) The incorporated limited partnership is dissolved on the registration of the statement.
- (4) A person who signs a statement delivered to the registrar under paragraph (1), without having reasonable grounds for stating that the incorporated limited partnership has no assets and no liabilities, shall be guilty of an offence and liable to imprisonment for 2 years and a fine.

13 Effect of insolvency on summary winding up

- (1) This Regulation applies if, after the commencement of a summary winding up of an incorporated limited partnership –
- (a) a liquidator appointed in accordance with Regulation 7 forms the opinion that the partnership has liabilities that it will be unable to discharge within 6 months of the commencement of the winding up or, if they fall due after that date, as they become due; or
- (b) no liquidator having been appointed under Regulation 7, a majority of the general partners of the partnership form that opinion.
- (2) The liquidator or general partners shall record the opinion –
- (a) in the case of a liquidator, in his or her records of the administration of the affairs of the incorporated limited partnership; or
- (b) in the case of the general partners, in a written memorandum signed by each of the general partners who have formed the opinion.

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- (3) The liquidator or general partners shall give each creditor of the incorporated limited partnership notice, by post, calling a meeting of the creditors to be held in Jersey not less than 14 days after the service of the notice and not more than 28 days after the opinion is recorded in accordance with paragraph (2).
 - (4) The notice shall contain the name of a person nominated as liquidator of the incorporated limited partnership for a creditors' winding up.
 - (5) The liquidator or general partners shall deliver a copy of the notice to the registrar.
 - (6) The liquidator or general partners shall also give notice of the meeting of the creditors of the incorporated limited partnership by advertisement in the Jersey Gazette not less than 10 days before the day for which the meeting is called.
 - (7) Before the meeting, the liquidator or general partners shall furnish any creditor free of charge with such information concerning the affairs of the incorporated limited partnership as the creditor may reasonably request.
 - (8) At the meeting, the liquidator or the general partners shall provide a statement as to the affairs of the incorporated limited partnership.
 - (9) The statement must be verified by affidavit.
 - (10) The affidavit may be sworn by –
 - (a) the liquidator;
 - (b) a general partner of the incorporated limited partnership; or
 - (c) an officer of any body corporate that is a general partner of the partnership.
 - (11) The affidavit may be sworn by one or more of those persons.
 - (12) At the creditors' meeting, the liquidator shall preside if one has been appointed but otherwise the person nominated by the general partners shall preside.
 - (13) From the day of the creditors' meeting, the winding up becomes a creditors' winding up and these Regulations have effect as if the meeting were the meeting of creditors mentioned in Regulation 26, and Regulation 28 shall apply accordingly.
 - (14) A liquidator or general partner who, without reasonable excuse, fails to comply with any of his or her obligations under this Regulation shall be guilty of an offence and liable to imprisonment for 2 years and a fine.

14 Remuneration of liquidator in summary winding up

- (1) A liquidator appointed under Regulation 7 is entitled to receive from the incorporated limited partnership –
 - (a) any remuneration agreed between the liquidator and the partnership before his or her appointment; and
 - (b) any other remuneration that is subsequently approved by the partnership.

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- (2) However, if the Royal Court subsequently determines the amount of the liquidator's remuneration, he or she shall instead be entitled to receive the remuneration so determined.

15 Cesser of office by liquidator in summary winding up

- (1) The general partners of an incorporated limited partnership may remove from office a liquidator appointed under Regulation 7.
- (2) If the general partners remove a liquidator under paragraph (1), they shall record their decision in a written memorandum signed by each of them.
- (3) A liquidator appointed under Regulation 7 vacates office on ceasing to be qualified to hold the office.

16 Termination of summary winding up

- (1) Where –
- (a) the summary winding up of an incorporated limited partnership has commenced;
 - (b) the partnership has not received any contribution from any present or past partner pursuant to Regulation 65;
 - (c) the partnership has not for the purposes of the winding up distributed any of its assets among its partners;
 - (d) the partnership is able to discharge its liabilities as they fall due; and
 - (e) the general partners have agreed, in a written memorandum signed by each of them, that the winding up be terminated,
- the documents described in paragraph (2) may be delivered to the registrar.
- (2) The documents to be delivered to the registrar pursuant to paragraph (1) are a certificate signed by each general partner of the incorporated limited partnership stating that –
- (a) the partnership has not received any contribution from any present or past partner pursuant to Regulation 65;
 - (b) the partnership has not for the purposes of the winding up distributed any of its assets among its partners; and
 - (c) the partnership is able to discharge its liabilities as they fall due, and
- a copy of the written memorandum mentioned in paragraph (1)(e).
- (3) On the delivery of those documents to the registrar, the winding up shall forthwith terminate.
- (4) On the termination of a winding up under this Regulation –
- (a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and

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- (b) the incorporated limited partnership and all other persons shall be in the same position, subject to paragraph (5), as if the winding up had not commenced.
 - (5) The termination of a winding up under this Regulation shall not affect the validity of anything duly done by any liquidator, general partner or other person, or by operation of law, before the termination.
 - (6) A general partner who signs a certificate delivered to the registrar pursuant to paragraph (1) without having reasonable grounds for believing that the statements in it are true shall be guilty of an offence and liable to imprisonment for 2 years and a fine.

17 Declaration under Désastre Law during summary winding up

- (1) If –
 - (a) a summary winding up of an incorporated limited partnership has commenced; and
 - (b) a declaration is made in respect of the partnership under the Bankruptcy (Désastre) (Jersey) Law 1990,the winding up shall forthwith terminate.
- (2) On the termination of the winding up under this Regulation –
 - (a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and
 - (b) the incorporated limited partnership and all other persons shall be in the same position, subject to paragraph (3), as if the winding up had not commenced.
- (3) The termination of a winding up under this Regulation shall not affect the validity of any thing duly done by any liquidator, general partner or other person, or by operation of law, before the termination.

PART 3

WINDING UP ON ORDER OF COURT

18 Application of Part 3

This Part does not apply to an incorporated limited partnership in respect of which a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990, and has not been recalled under that Law.

19 Power of Royal Court to wind up

- (1) An incorporated limited partnership may be wound up by the Royal Court if the court is of the opinion that –
 - (a) it is just and equitable to do so; or
 - (b) it is expedient in the public interest to do so.

- (2) An application to the Royal Court under this Regulation on the ground mentioned in paragraph (1)(a) may be made by the incorporated limited partnership or by a partner of the partnership or by the Minister or the Commission.
- (3) An application to the Royal Court under this Regulation on the ground mentioned in paragraph (1)(b) may be made by the Minister or by the Commission.
- (4) If the Royal Court orders an incorporated limited partnership to be wound up under this Regulation, the court may –
 - (a) appoint a liquidator;
 - (b) direct the manner in which the winding-up is to be conducted; and
 - (c) make such orders as it sees fit to ensure that the winding-up is conducted in an orderly manner.
- (5) The Act of the Royal Court ordering the winding up of an incorporated limited partnership under this Regulation –
 - (a) shall be delivered by the partnership to the registrar within 14 days after it is made; and
 - (b) shall be recorded by the registrar when he or she receives it.
- (6) If the incorporated limited partnership fails to comply with paragraph (5)(a), the partnership and each of its general partners shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

PART 4

CREDITORS' WINDING UP

20 Application of Part 4

- (1) This Part applies to the winding up of an incorporated limited partnership otherwise than under Part 2 or 3.
- (2) However, it does not apply to an incorporated limited partnership in respect of which a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990, and has not been recalled under that Law.
- (3) A winding up under this Part is a creditors' winding up.

21 Notice of proposed creditors' winding up

- (1) Before the general partners of an incorporated limited partnership may resolve under Regulation 23 to wind it up, the partnership must comply with this Regulation.
- (2) The incorporated limited partnership shall, not less than 14 days before the day on which it is proposed to resolve to wind it up, give by post to its creditors notice –

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- (a) calling a meeting of creditors to be held in Jersey, on the day on which it is proposed to pass the resolution and immediately following the passing of the resolution; and
 - (b) nominating a person to be liquidator for the purposes of a creditors' winding up.
 - (3) The incorporated limited partnership shall also give notice of the creditors' meeting by advertisement in the Jersey Gazette, not less than 10 days before the day for which that meeting has been called.
 - (4) During the period before the passing of the resolution, the incorporated limited partnership shall also furnish creditors free of charge with such information concerning the partnership's affairs as they may reasonably require.

22 Other arrangements in anticipation of creditors' meeting

- (1) Before the general partners of an incorporated limited partnership may resolve under Regulation 23 to wind it up, they must –
 - (a) make out a statement as to its affairs; and
 - (b) appoint a general partner, or an officer of any body corporate that is a general partner, to preside at the meeting of creditors.
- (2) The statement must be verified by affidavit.
- (3) The affidavit may be sworn by –
 - (a) a general partner of the incorporated limited partnership; or
 - (b) an officer of any body corporate that is a general partner of the partnership.
- (4) The affidavit may be sworn by one or more of those persons.

23 Resolution for creditors' winding up

- (1) If an incorporated limited partnership has complied with Regulations 21 and 22, the general partners may resolve that the partnership be wound up under this Part.
- (2) If the general partners resolve under paragraph (1) that the incorporated limited partnership be wound up under this Part, they shall record their resolution in a written memorandum signed by each of them.

24 Notice of passing of resolution for creditors' winding up

- (1) If the general partners of an incorporated limited partnership have resolved that the partnership be wound up under this Part, the partnership must within 14 days give notice of that fact by advertisement in the Jersey Gazette.
- (2) If paragraph (1) is contravened in respect of an incorporated limited partnership –
 - (a) the partnership; and

-
- (b) each general partner of it who knowingly and wilfully permits the contravention,
shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

25 Commencement and effects of creditors' winding up

- (1) A creditors' winding up commences –
- (a) at the time at which the resolution under Regulation 23 for winding up is passed; or
- (b) where Regulation 13 applies, at the time at which the winding up becomes a creditors' winding up,
as the case may be, and where Regulation 6 has not previously had effect, the incorporated limited partnership must from the commencement of the winding up cease to carry on its business, except so far as may be required for its advantageous winding up.
- (2) The corporate state and capacity of the incorporated limited partnership continue until the partnership is dissolved.
- (3) After the commencement of the winding up, no action shall be taken or proceeded with against the incorporated limited partnership, except by leave of the Royal Court and subject to such terms as the court may impose.

26 Meeting of creditors

- (1) At the meeting of creditors, the person who has been appointed by the incorporated limited partnership to preside shall attend and do so.
- (2) The general partners shall lay before the meeting of creditors the statement to which Regulation 22(1) refers.
- (3) A general partner who without reasonable excuse fails to comply with paragraph (1) or (2) shall be guilty of an offence and liable to a fine.

27 Appointment of liquidator in creditors' winding up

- (1) At the creditors' meeting, the creditors and the incorporated limited partnership may each nominate a person to be liquidator for the purpose of the winding up.
- (2) Where a creditors' meeting is called in accordance with Regulation 13, the person nominated to be liquidator in the notice calling the meeting shall be treated, for the purposes of this Regulation, as having been nominated under paragraph (1) of this Regulation by the incorporated limited partnership.
- (3) If the creditors nominate a person to be liquidator, the person so nominated is appointed liquidator with effect from the conclusion of the creditors' meeting.

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- (4) If no person is nominated by the creditors, the person who is nominated to be liquidator by the incorporated limited partnership, or is under paragraph (2) to be treated as having been so nominated, is appointed liquidator with effect from the conclusion of the creditors' meeting.
 - (5) However, in the case of different persons being nominated, a partner or creditor of the incorporated limited partnership may within 7 days after the date on which the nomination was made by the creditors apply to the Royal Court for an order either –
 - (a) directing that the person nominated as liquidator by the partnership shall be liquidator instead of or jointly with the person nominated by the creditors; or
 - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.
 - (6) A liquidator appointed under this Regulation shall within 14 days after his or her appointment give notice of the appointment, signed by the liquidator, to the registrar and to each creditor of whom the liquidator is aware.
 - (7) A liquidator who fails to comply with paragraph (6) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.
 - (8) Article 4 of the Law applies to a liquidator appointed under this Regulation, in respect of the information to which Article 4(3)(c) of the Law refers, as it applies to a general partner.

28 Appointment of liquidation committee

- (1) A creditors' meeting may appoint a liquidation committee consisting of not more than 5 persons to exercise the functions conferred on it by or under this Law.
- (2) If a committee is appointed, the incorporated limited partnership may appoint such number of persons, not exceeding 5, as it thinks fit to act as members of the committee.
- (3) The creditors may resolve that all or any of the persons so appointed by the incorporated limited partnership ought not to be members of the committee; and if the creditors so resolve –
 - (a) the persons mentioned in the resolution are not then, unless the Royal Court otherwise directs, qualified to act as members of the committee; and
 - (b) on an application to the court under this paragraph, the court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

29 Remuneration of liquidator in creditors' winding up

A liquidator in a creditors' winding up is entitled to receive such remuneration as is agreed between the liquidator and the liquidation committee or, if there is no committee, between the liquidator and the creditors or, failing any such agreement, as is fixed by the Royal Court on the application of the liquidator.

30 Effect of appointment on powers of general partners

On the appointment of a liquidator in a creditors' winding up, all the powers of the general partners cease, except so far as the liquidation committee (or, if there is no committee, the creditors) sanction their continuance.

31 Cesser of liquidator in creditors' winding up

- (1) The creditors may at any time remove a liquidator in a creditors' winding up.
- (2) If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator in a creditors' winding up, the creditors may fill the vacancy.
- (3) This Regulation does not apply to a liquidator appointed by the Royal Court.

32 Non-appointment of liquidator in creditors' winding up

- (1) This Regulation applies where a creditors' winding up has commenced but no liquidator has been appointed.
- (2) During the period before the appointment of a liquidator, the powers of the general partners shall not be exercised except –
 - (a) with the sanction of the Royal Court;
 - (b) to secure compliance with Regulation 13; or
 - (c) to protect the incorporated limited partnership's assets.
- (3) If the general partners, without reasonable excuse, fail to comply with this Regulation, they shall each be guilty of an offence and liable to imprisonment for 6 months and a fine.

33 Costs of creditors' winding up

All costs, charges and expenses properly incurred in a creditors' winding up, including the remuneration of the liquidator, are payable out of the incorporated limited partnership's assets in priority to all other claims.

34 Application in creditors' winding up of Law relating to désastre

- (1) Subject to this Regulation and Regulation 33, in a creditors' winding up the same rules prevail with regard to the respective rights of secured and unsecured creditors, to debts provable, to the time and manner of proving debts, to the admission and rejection of proofs of debts, to the order of payment of debts and to setting off debts as are in force for the time being with respect to persons against whom a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990, with the substitution of references to the winding up for references to the désastre and references to the liquidator for references to the Viscount.
- (2) Any surplus remaining after payment of the debts proved in the winding up, before being applied for any other purpose, shall be applied in paying

interest on those debts that bore interest prior to the commencement of the winding up in respect of the period during which they have been outstanding since the commencement of the winding up and at the rate of interest applicable apart from the winding up.

35 Arrangements that bind partnership and creditors

- (1) An arrangement entered into immediately preceding the commencement of a creditors' winding up or in the course of a creditors' winding up, between the incorporated limited partnership and its creditors, is (subject to paragraph (2)) binding –
 - (a) on the partnership, if agreed to by the partners of the partnership; and
 - (b) on the creditors, if acceded to by three-quarters in number and value of them.
- (2) A creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the Royal Court against it; and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

36 Subsequent meetings of creditors, and of partners

- (1) If a creditors' winding up continues for more than 12 months, the liquidator shall call a meeting of the partners of the incorporated limited partnership and a meeting of the creditors to be held at the first convenient date within 3 months after the end of the first 12 months from the commencement of the winding up, and of each succeeding 12 months, or such longer period as the Commission may allow, and shall lay before the meetings an account of the liquidator's acts and dealings and of the conduct of the winding up during the preceding 12 months.
- (2) If the liquidator fails to comply with this Regulation, the liquidator shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

37 Final meetings, and dissolution

- (1) As soon as the affairs of an incorporated limited partnership in a creditors' winding up are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and how the partnership's property has been disposed of.
- (2) On doing so, the liquidator shall call a meeting of the partners of the incorporated limited partnership and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.
- (3) Each meeting shall be called by not less than 21 days' notice sent by post, accompanied by a copy of the liquidator's account.
- (4) Within 7 days after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall make a return to the registrar of the holding of the meetings and of their dates.

- (5) If the return is not made in accordance with paragraph (4), the liquidator shall be guilty of an offence and liable to a fine of level 2 on the standard scale.
- (6) If a quorum is not present at either such meeting, the liquidator shall, instead of the return required by paragraph (4), deliver a return that the meeting was duly called and that no quorum was present; and when that return is made the provisions of that paragraph as to the making of the return shall, in respect of that meeting, be treated as having been complied with.
- (7) The registrar on receiving in respect of each meeting either of the returns mentioned above, shall forthwith register them, and at the end of 3 months from the registration of the return the incorporated limited partnership is to be treated as dissolved; but the Royal Court may, on the application of the liquidator or of another person who appears to the court to be interested, make an order deferring the date at which the dissolution of the partnership is to take effect for such time as the court thinks fit.
- (8) The person on whose application an order of the Royal Court under this Regulation is made shall, within 14 days after the making of the order, deliver to the registrar the relevant Act of the court for registration; and if that person fails to do so the person shall be guilty of an offence and liable to a fine of level 3 on the standard scale.
- (9) If the liquidator fails to call a meeting of the partners of the incorporated limited partnership or a meeting of the creditors as required by this Regulation the liquidator shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

38 Procedure at creditors' meetings

- (1) Except as otherwise provided by this Regulation, a creditor who has been given notice of a creditors' meeting is entitled to vote at the meeting (either in person or by proxy) and any adjournment of it.
- (2) The value of a creditor's vote shall be calculated according to the amount of the creditor's debt at the date of the commencement of the winding up.
- (3) A debt for an unliquidated amount or a debt the value of which has not been ascertained does not give a creditor the right to vote at a creditors' meetings, but the chairman of the meeting may put upon the debt an estimated minimum value that entitles the creditor to vote.
- (4) For a resolution to pass at a creditors' meeting it must be supported by creditors the values of whose votes are at least half the value of the votes of the creditors who vote on the resolution.
- (5) The quorum for a creditors' meeting is –
 - (a) 3 creditors (or their proxies), if there are not fewer than 3 creditors who are entitled to vote; or
 - (b) all of the creditors (or their proxies) who are entitled to vote, if there are fewer than 3 creditors entitled to vote.

39 Powers and duties of liquidator in creditors' winding up

- (1) The liquidator in a creditors' winding up may, with the sanction of the Royal Court or the liquidation committee (or, if there is no such committee, a meeting of the creditors) –
 - (a) pay a class of creditors in full;
 - (b) compromise any claim by or against the incorporated limited partnership.
- (2) The liquidator may, without sanction, exercise any other power of the incorporated limited partnership as may be required for its advantageous winding up.
- (3) The liquidator may settle a list of contributories.
- (4) The list of contributories is prima facie evidence that the persons named in it are contributories.
- (5) The liquidator shall pay the incorporated limited partnership's debts and adjust the rights of the contributories among themselves.
- (6) The appointment or nomination of more than one person as liquidator shall declare whether any act to be done is to be done by all or any one or more of them, and in default, any such act may be done by two or more of them.

40 Power to disclaim onerous property

- (1) For the purpose of this Regulation, "onerous property" means –
 - (a) movable property;
 - (b) a contract lease;
 - (c) other immovable property if it is situated outside Jersey,that is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act, and includes an unprofitable contract.
- (2) The liquidator in a creditors' winding up may, within 6 months after the commencement of the winding up, by the giving of notice, signed by him or her and referring to this Regulation and Regulation 42, to each person who is interested in or under any liability in respect of the property disclaimed, disclaim on behalf of the incorporated limited partnership any onerous property of the partnership.
- (3) A disclaimer under this Regulation shall –
 - (a) operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the incorporated limited partnership in or in respect of the property disclaimed; and
 - (b) discharge the partnership from all liability in respect of the property as of the date of the commencement of the creditors' winding up,but shall not, except so far as is necessary for the purpose of releasing the partnership from liability, affect the rights or liabilities of any other person.

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- (4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Regulation shall be treated as a creditor of the incorporated limited partnership to the extent of the loss or damage, and accordingly may prove for the loss or damage in the winding up.

41 Disclaimer of contract leases

- (1) The disclaimer of a contract lease does not take effect unless a copy of the disclaimer has been served on each person specified in paragraph (2), and either –
- (a) at the end of the period of 14 days beginning with the day on which the last notice under this paragraph is served, no application under Regulation 42 has been made with respect to the contract lease; or
 - (b) where such an application has been made, the Royal Court directs that the disclaimer is to have effect.
- (2) Paragraph (1) refers to a person claiming under the incorporated limited partnership as a hypothecary creditor or under-lessee, being a person of whose address the liquidator is aware.
- (3) Where the Royal Court gives a direction under paragraph (1) it may also, instead of or in addition to any order it makes under Regulation 42, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

42 Powers of Royal Court in respect of disclaimed property

- (1) This Regulation applies where the liquidator of an incorporated limited partnership has disclaimed property under Regulation 40.
- (2) An application may be made to the Royal Court under this Regulation by –
- (a) any person who claims an interest in the disclaimed property (which term shall be taken to include, in the case of the disclaimer of a contract lease, a person claiming under the incorporated limited partnership as a hypothecary creditor or an under-lessee); or
 - (b) any person who is under any liability in respect of the disclaimed property (which term shall be taken to include a guarantor), not being a liability discharged by the disclaimer.
- (3) Subject to paragraph (4), the Royal Court may, on an application under this Regulation, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –
- (a) a person entitled to it or a trustee for such a person; or
 - (b) a person subject to a liability mentioned in paragraph (2)(b) or a trustee for such a person.
- (4) The Royal Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

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- (5) The effect of an order under this Regulation shall be taken into account in assessing for the purpose of Regulation 40(4) the extent of loss or damage sustained by a person in consequence of the disclaimer.

43 Unenforceability of liens on records

- (1) Subject to paragraph (2), in a creditors' winding up a lien or other right to retain possession of a record of an incorporated limited partnership shall be unenforceable to the extent that its enforcement would deny possession of the record to the liquidator.
- (2) Paragraph (1) does not apply to a lien on a document that gives a title to property and is held as such.

44 Appointment and removal of liquidator by Royal Court

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

45 Transactions at an undervalue

- (1) If an incorporated limited partnership has at a relevant time entered into a transaction with a person at an undervalue the Royal Court may, on the application of the liquidator in a creditors' winding up, make such an order as the court thinks fit for restoring the position to what it would have been if the partnership had not entered into the transaction.
- (2) The Royal Court shall not make an order under paragraph (1) if it is satisfied –
- (a) that the incorporated limited partnership entered into the transaction in good faith for the purpose of carrying on its business; and
 - (b) that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the partnership.
- (3) Without prejudice to the generality of paragraph (1) but subject to paragraph (5), an order made under paragraph (1) may do all or any of the following things, namely –
- (a) require property transferred as part of the transaction to be vested in the incorporated limited partnership;
 - (b) require property to be so vested if it represents in a person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
 - (c) release or discharge (in whole or in part) security given by the partnership;

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- (d) require a person to pay in respect of a benefit received by him or her from the partnership such sum to the partnership as the Royal Court directs;
 - (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) under the transaction to be under such new or revived obligation to that person as the court thinks appropriate;
 - (f) provide for security to be provided for the discharge of an obligation imposed by or arising under the order, for the obligation to be secured on any property, and for the security to have the same priority as the security released or discharged (in whole or in part) under the transaction;
 - (g) provide for the extent to which a person whose property is vested in the partnership by the order, or on whom an obligation is imposed by the order, is to be able to prove in the winding up of the partnership for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction.
- (4) Except to the extent provided by paragraph (5), an order made under paragraph (1) may affect the property of or impose an obligation on any person, whether or not he or she is the person with whom the incorporated limited partnership entered into the transaction.
- (5) An order made under paragraph (1) –
- (a) shall not prejudice an interest in property that was acquired from a person other than the incorporated limited partnership and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and
 - (b) shall not require a person who in good faith and for value received a benefit from the transaction to pay a sum to the partnership, except where the person was a party to the transaction.
- (6) In considering for the purposes of this Regulation whether a person has acted in good faith, the Royal Court may take into consideration –
- (a) whether the person was aware that the incorporated limited partnership had entered into a transaction at an undervalue, and that the partnership was insolvent or would as a likely result of entering into the transaction become insolvent; and
 - (b) whether the person was an associate of or was connected with either the partnership or the person with whom the partnership had entered into the transaction.
- (7) For the purposes of this Regulation, an incorporated limited partnership enters into a transaction with a person at an undervalue if –
- (a) it makes a gift to that person; or
 - (b) it enters into a transaction with that person on terms for which there is no cause, or for a cause the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the cause provided by the partnership.

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- (8) Subject to paragraphs (9) and (10), the time at which an incorporated limited partnership entered into a transaction at an undervalue is a relevant time for the purpose of paragraph (1) if the transaction was entered into during the period of 5 years immediately preceding the date of commencement of the winding up.
 - (9) The time to which paragraph (8) refers is not a relevant time unless –
 - (a) the incorporated limited partnership was insolvent when it entered into the transaction; or
 - (b) the partnership became insolvent as a result of the transaction.
 - (10) If the transaction at an undervalue was entered into with a person connected with the incorporated limited partnership, paragraph (9) does not apply and the time to which paragraph (8) refers is a relevant time unless it is proved that –
 - (a) the partnership was not insolvent when it entered into the transaction; and
 - (b) it did not become insolvent as a result of the transaction.

46 Giving of preferences

- (1) If an incorporated limited partnership has at a relevant time given a preference to a person the Royal Court may, on the application of the liquidator in a creditors' winding up, make such an order as the court thinks fit for restoring the position to what it would have been if the preference had not been given.
- (2) Without prejudice to the generality of paragraph (1) but subject to paragraph (4), an order made under paragraph (1) may do all or any of the following things, namely –
 - (a) require property transferred in connection with the giving of the preference to be vested in the incorporated limited partnership;
 - (b) require property to be vested in the partnership if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
 - (c) release or discharge (in whole or in part) security given by the partnership;
 - (d) require a person to pay, in respect of a benefit received by him or her from the partnership, such sum to the partnership as the Royal Court directs;
 - (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) by the giving of the preference to be under such new or revived obligation to that person as the court thinks appropriate;
 - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be secured on any property, and for the security to have the same priority as the security released or discharged (in whole or in part) by the giving of the preference;

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- (g) provide for the extent to which a person whose property is vested by the order in the partnership, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the partnership for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by the giving of the preference.
 - (3) Except as provided by paragraph (4), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person whether or not he or she is the person to whom the preference was given.
 - (4) An order made under paragraph (1) shall not –
 - (a) prejudice an interest in property that was acquired from a person other than the incorporated limited partnership and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or
 - (b) require a person who in good faith and for value received a benefit from the preference to pay a sum to the partnership, except where the payment is in respect of a preference given to that person at a time when he or she was a creditor of the partnership.
 - (5) In considering for the purpose of this Regulation whether a person has acted in good faith, the Royal Court may take into consideration –
 - (a) whether the person had notice of the circumstances that amounted to the giving of the preference by the incorporated limited partnership, and of the fact that the partnership was insolvent or would as a likely result of giving the preference become insolvent; and
 - (b) whether the person was an associate of or was connected with either the partnership or the person to whom the partnership gave the preference.
 - (6) For the purposes of this Regulation, an incorporated limited partnership gives a preference to a person if –
 - (a) the person is a creditor of the partnership or a surety or guarantor for a debt or other liability of the partnership; and
 - (b) the partnership does anything, or suffers anything to be done, that has the effect of putting the person into a position that, in the event of the winding up of the partnership, will be better than the position he or she would have been in if that thing had not been done.
 - (7) The Royal Court shall not make an order under this Regulation in respect of a preference given to a person unless the incorporated limited partnership, when giving the preference, was influenced in deciding to give the preference by a desire to put the person into a position that, in the event of the winding up of the partnership, would be better than the position in which the person would be if the preference had not been given.
 - (8) An incorporated limited partnership that gave a preference to a person who was, at the time the preference was given, connected with the partnership (otherwise than by reason only of being the partnership's

employee) shall be presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire mentioned in paragraph (7).

- (9) Subject to paragraphs (10) and (11), the time at which an incorporated limited partnership gives a preference is a relevant time for the purpose of paragraph (1) if the preference was given during the period of 12 months immediately preceding the commencement of the winding up.
- (10) The time to which paragraph (9) refers is not a relevant time unless –
 - (a) the incorporated limited partnership was insolvent at the time the preference was given; or
 - (b) the partnership became insolvent as a result of giving the preference.
- (11) If the preference was given to a person connected with the incorporated limited partnership, paragraph (10) does not apply and the time to which paragraph (9) refers is a relevant time unless it is proved that –
 - (a) the partnership was not insolvent at the time the preference was given; and
 - (b) it did not become insolvent as a result of the preference being given.

47 Definitions relating to transactions at an undervalue and preferences

- (1) For the purposes of Regulations 45 and 46, 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.
- (2) For the purposes of Regulations 45 and 46, and of this Regulation –
 - (a) a person is an associate of an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife;
 - (b) a person is an associate of any person with whom he or she is in partnership (whether or not such a partnership is a limited partnership), and of the husband or wife or a relative of any individual with whom he or she is in partnership;
 - (c) a person is an associate of any person whom he or she employs or by whom he or she is employed;
 - (d) a person in his or her capacity as a trustee of a trust is an associate of another person if the beneficiaries of the trust include that other person or an associate of that other person, or the terms of the trust confer a power that may be exercised for the benefit of that other person or an associate of that other person;
 - (e) a limited partner of an incorporated limited partnership is an associate of a general partner of the partnership;

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- (f) 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;
 - (g) 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;
 - (h) 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
 - (i) a provision that a person is an associate of another person shall be taken to mean that they are associates of each other.
- (3) For the purposes of this Regulation, a person is a relative of an individual if he or she is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, for which purpose –
- (a) any relationship of the half blood shall be treated as a relationship of the whole blood and the stepchild or adopted child of a person as his or her child; and
 - (b) an illegitimate child shall be treated as the legitimate child of his or her mother and reputed father.
- (4) References in this Regulation to a husband or wife include a former husband or wife and a reputed husband or wife.
- (5) For the purposes of this Regulation, a general partner of an incorporated limited partnership shall be treated as employed by the partnership.
- (6) For the purposes of this Regulation, 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 any of them) are accustomed to act in accordance with his or her directions or instructions; or
 - (c) the directors or general partners of another body corporate that has control of the partnership (or any of them) are accustomed to act in accordance with his or her directions or instructions; or
 - (d) he or she has control (within the meaning of this Regulation) of another body corporate that has control of the partnership,
- and where 2 or more persons together satisfy any of the above conditions, they shall be taken as having control of the incorporated limited partnership.
- (7) For the purposes of this Regulation –

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- (a) a reference to a body corporate (other than an incorporated limited partnership) includes a body incorporated outside Jersey;
 - (b) a reference to a director of a body corporate includes, in the case of a body that is not a company, a person (however described) who undertakes in relation to the body any function of a director of a company.

48 Responsibility for fraudulent trading

- (1) If, in the course of a creditors' winding up, it appears that any business of the incorporated limited partnership has been carried on with intent to defraud creditors of the partnership or creditors of another person, or for a fraudulent purpose, the Royal Court may on the application of the liquidator order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the partnership's assets as the court thinks proper.
- (2) On the hearing of the application the liquidator may himself or herself give evidence or call witnesses.
- (3) Where the Royal Court makes an order under this Regulation, it may give such further directions as it thinks proper for giving effect to the order.
- (4) Where the Royal Court makes an order under this Regulation in relation to a person who is a creditor of the incorporated limited partnership, it may direct that the whole or part of a debt owed by the partnership to that person and any interest thereon shall rank in priority after all other debts owed by the partnership and after any interest on those debts.
- (5) This Regulation has effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the order under paragraph (1) is to be made.

49 Extortionate credit transactions

- (1) This Regulation applies in a creditors' winding up where the incorporated limited partnership is or has been a party to a transaction for, or involving, the provision of credit to the partnership.
- (2) The Royal Court may, on the application of the liquidator, make an order with respect to the transaction if the transaction –
 - (a) is or was extortionate; and
 - (b) was entered into in the period of 3 years ending with the commencement of the creditors' winding up.
- (3) For the purposes of this Regulation, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –
 - (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
 - (b) it otherwise grossly contravened ordinary principles of fair dealing.

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- (4) It shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Regulation is or, as the case may be, was extortionate.
 - (5) An order under this Regulation with respect to a transaction may contain one or more of the following as the Royal Court thinks fit –
 - (a) provision setting aside the whole or part of an obligation created by the transaction;
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;
 - (c) provision requiring a person who is or was a party to the transaction to pay to the liquidator sums paid to that person, by virtue of the transaction, by the incorporated limited partnership;
 - (d) provision requiring a person to surrender to the liquidator property held by him or her as security for the purposes of the transaction;
 - (e) provision directing accounts to be taken between any persons.

50 Delivery and seizure of property

- (1) Where a person has in his or her possession or control property or records to which an incorporated limited partnership appears in a creditors' winding up to be entitled, the Royal Court may require that person forthwith (or within a period that the court directs) to pay, deliver, convey, surrender or transfer the property or records to the liquidator.
- (2) Where –
 - (a) the liquidator seizes or disposes of property that is not property of the incorporated limited partnership; and
 - (b) at the time of seizure or disposal the liquidator believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of the Royal Court or otherwise) to seize or dispose of that property,

the liquidator is not liable to any person in respect of loss or damage resulting from the seizure or disposal, except in so far as the loss or damage is caused by the negligence of the liquidator.

- (3) Where paragraph (2)(a) and (b) apply, the liquidator has a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.

51 Liability in respect of returned contributions

- (1) This Regulation applies where an incorporated limited partnership is being wound up in a creditors' winding up and –
 - (a) it has within 6 months before the commencement of the winding up made to a limited partner a payment representing a return of any part of that partner's contribution to the partnership;

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- (b) the payment was not made wholly out of profits available for distribution; and
 - (c) the aggregate realizable value of the partnership's assets and the amount paid by way of contribution to its assets (apart from this Regulation) is not sufficient for the payment of its liabilities and the expenses of the winding up.
- (2) In this Regulation, the amount of a payment that has not been made wholly out of profits available for distribution is referred to as the "relevant payment".
- (3) Subject to paragraph (5), the Royal Court on the application of the liquidator may order –
- (a) the limited partner to whom the payment was made; or
 - (b) a general partner,
- to contribute in accordance with this Regulation to the incorporated limited partnership's assets so as to enable the insufficiency to be met.
- (4) The limited partner to whom the payment was made may be ordered to contribute an amount not exceeding so much of the relevant payment as he or she received, together with such interest as may be payable by that partner to the incorporated limited partnership under Article 16(2) of the Law in respect of the relevant payment.
- (5) The limited partner to whom the payment was made shall not be ordered to contribute under this Regulation unless the Royal Court is satisfied that, when he or she received the payment –
- (a) he or she knew; or
 - (b) he or she ought to have concluded from the facts known to him or her,
- that immediately after the relevant payment was made the incorporated limited partnership would be unable to discharge its liabilities as they fell due, and that the realizable value of the partnership's assets would be less than the aggregate of its liabilities.
- (6) Where a person has contributed an amount under this Regulation, the Royal Court may direct any other person who is jointly and severally liable to contribute under this Regulation to pay to him or her such amount as the court thinks just and reasonable.
- (7) Regulation 66 does not apply in relation to liability accruing by virtue of this Regulation.

52 Resolutions passed at adjourned creditors' meetings

Any resolution passed at an adjourned meeting of an incorporated limited partnership's creditors shall be treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

53 Duty to co-operate with liquidator

- (1) In a creditors' winding up, each of the persons mentioned in paragraph (2) shall –
 - (a) give the liquidator information concerning the incorporated limited partnership and its promotion, formation, business, dealings, affairs or property that the liquidator may at any time after the commencement of the winding up reasonably require;
 - (b) attend on the liquidator at reasonable times and on reasonable notice when requested to do so; and
 - (c) notify the liquidator in writing of any change of his or her address, employment, or name.
- (2) The persons to whom paragraph (1) refers are –
 - (a) those who are or have at any time been general partners of the incorporated limited partnership;
 - (b) those who have taken part in the formation of the partnership at any time within 12 months before the commencement of the winding up; and
 - (c) those who are in the employment of the partnership, or have been in its employment within those 12 months, and are in the liquidator's opinion capable of giving information that he or she requires.
- (3) For the purposes of paragraph (2) "employment" includes employment under a contract for services (contrat de louage d'ouvrage).
- (4) A person who, without reasonable excuse, fails to comply with an obligation imposed by this Regulation, shall be guilty of an offence and liable to imprisonment for 6 months and a fine.

54 Liquidator to report possible misconduct

- (1) The liquidator in a creditors' winding up shall take the action specified in paragraph (2) if it appears to the liquidator in the course of the winding up –
 - (a) that the incorporated limited partnership has committed a criminal offence; or
 - (b) that a person has committed a criminal offence in relation to the partnership's being wound up.
- (2) The liquidator shall –
 - (a) forthwith report the matter to the Attorney General; and
 - (b) furnish the Attorney General with information and give him or her access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the Attorney General requires.

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- (3) Where a report is made to the Attorney General under paragraph (2), the Attorney General may refer the matter to the Minister or the Commission for further enquiry.
 - (4) On the reference, the Minister or the Commission shall investigate the matter.
 - (5) If it appears to the Royal Court in the course of a creditors' winding up –
 - (a) that the incorporated limited partnership has committed a criminal offence; or
 - (b) that a person has committed a criminal offence in relation to the partnership's being wound up,

and that no report with respect to the matter has been made by the liquidator to the Attorney General under paragraph (2), the Royal Court may (on the application of a person interested in the winding up or of its own motion) direct the liquidator to make such a report.

55 Obligations arising under Regulation 54

- (1) Where criminal proceedings are instituted by the Attorney General following a report or reference under Regulation 54 –
 - (a) the liquidator; and
 - (b) each person who is a past or present general partner or past or present agent of the incorporated limited partnership,shall give the Attorney General any assistance in connection with the prosecution that he or she is reasonably able to give.
- (2) In paragraph (1) "agent" includes a banker, advocate or solicitor of the incorporated limited partnership and a person employed by the partnership as auditor, whether or not that person is a general partner of the partnership.
- (3) If a person fails to give assistance as required by paragraph (1), the Royal Court may, on the application of the Attorney General –
 - (a) direct the person to comply with that paragraph; and
 - (b) if the application is made with respect to a liquidator, direct that the costs of the application shall be borne by the liquidator personally unless it appears that the failure to comply was due to the fact that the liquidator did not have sufficient assets of the incorporated limited partnership in his or her hands to enable him or her to do so.
- (4) Paragraph (1) does not impose an obligation on a defendant in the criminal proceedings.

56 Termination of creditors' winding up

- (1) The liquidator of an incorporated limited partnership that is in the course of being wound up by a creditors' winding up may apply to the Royal Court for an order terminating the winding up.

- (2) The general partners of an incorporated limited partnership that is in the course of being wound up by a creditors' winding up may apply to the Royal Court for an order terminating the winding up.
- (3) The Royal Court shall refuse an application under paragraph (1) or (2) unless it is satisfied that the incorporated limited partnership is then able to discharge its liabilities in full as they fall due.
- (4) In considering the application the Royal Court shall have regard to the interests of the creditors of the incorporated limited partnership.
- (5) If the application for winding up the incorporated limited partnership was made by the Commission under Regulation 19(2) or (3), the Royal Court shall also have regard to the views of the Commission.
- (6) If the Royal Court makes an order under this Regulation, it may make such order as to costs as it thinks fit.
- (7) Upon the termination of a creditors' winding up pursuant to paragraph (1) or (2), any liquidator appointed for the purpose of the creditors' winding up shall cease to hold office.
- (8) The termination of a creditors' winding up pursuant to paragraph (1) or (2) shall not prejudice the validity of any thing duly done by any liquidator, general partner or other person, or by operation of law, before its termination.

57 Declaration under Désastre Law during creditors' winding up

- (1) If –
 - (a) a creditors' winding up of an incorporated limited partnership has commenced; and
 - (b) a declaration is made in respect of the partnership under the Bankruptcy (Désastre) (Jersey) Law 1990,the winding up shall forthwith terminate.
- (2) On the termination of the winding up pursuant to paragraph (1) –
 - (a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and
 - (b) the incorporated limited partnership and all other persons shall be in the same position, subject to paragraph (3), as if the winding up had not commenced.
- (3) The termination of a winding up pursuant to paragraph (1) shall not affect the validity of any thing duly done by any liquidator, general partner or other person, or by operation of law, before the termination.

58 Distribution of partnership's assets

- (1) Subject to any enactment as to the order of payment of debts, an incorporated limited partnership's assets shall on a winding up be applied in satisfaction of the partnership's liabilities *pari passu*.

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- (2) Unless the partnership agreement otherwise provides, any remaining assets of the incorporated limited partnership shall be distributed among the members according to their rights and interests in the partnership.

PART 5

PROVISIONS OF GENERAL APPLICATION IN WINDINGS UP

59 References to Royal Court

- (1) The following persons, namely –
 - (a) the incorporated limited partnership, in a summary winding up;
 - (b) the liquidator or a contributory or creditor of the partnership, in a creditors' winding up,may apply to the Royal Court for the determination of a question arising in the winding up, or for the court to exercise any of its powers in relation to the winding up.
- (2) The Royal Court, if satisfied that it will be just and beneficial to do so, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.
- (3) The Royal Court may exercise all or any of the powers that would have been exercisable by it or by the Viscount if a declaration had been made in relation to the incorporated limited partnership under the Bankruptcy (Désastre) (Jersey) Law 1990, and may make an order terminating the winding up.

60 Enforcement of liquidator's duties

- (1) If, in a winding up, a general partner or a liquidator who has defaulted in delivering a document or in giving any notice that the person is by Law required to deliver, or fails to make good the default within 14 days after the service on the person of a notice requiring the person to do so, the Royal Court has the following powers.
- (2) On an application made by a creditor or contributory of the incorporated limited partnership, or by the registrar, the Royal Court may make an order directing the general partner or the liquidator to make good the default within the time specified in the order.
- (3) The Royal Court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the general partner or the liquidator personally.
- (4) Nothing in paragraph (1) prejudices the operation of any enactment imposing penalties on a general partner or a liquidator in respect of a default mentioned in that enactment.

61 Qualifications of liquidator

- (1) A person who is not an individual is not qualified to act as a liquidator.
- (2) The Minister may by Order prescribe the qualifications required for any person to act as a liquidator.
- (3) An appointment made in contravention of this Regulation or of an Order made under it is void.
- (4) A person who acts as liquidator when not qualified to do so shall be guilty of an offence and liable to imprisonment for 2 years and a fine.
- (5) A liquidator shall vacate office if the liquidator ceases to be a person qualified to act as a liquidator.

62 Corrupt inducements

A person who gives or agrees or offers to give to a partner or creditor of an incorporated limited partnership any valuable benefit with a view to securing his or her own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the partnership's liquidator, shall be guilty of an offence and liable to imprisonment for 2 years and a fine.

63 Notification of cesser of office

- (1) A liquidator who resigns, is removed or for any other reason vacates office shall within 14 days after the resignation, removal or vacation of office give notice thereof, signed by the liquidator, to the registrar and in the case of a creditors' winding up (except where the removal is pursuant to Regulation 31(1)) to the creditors.
- (2) A liquidator who fails to comply with paragraph (1) shall be guilty of an offence and liable to a fine.

64 Notification that partnership is in liquidation

- (1) When an incorporated limited partnership is being wound up, each invoice, order for goods or services or business letter issued by or on behalf of the partnership, or a liquidator of the partnership, being a document on or in which the name of the partnership appears, shall contain a statement that the partnership is in liquidation.
- (2) If paragraph (1) is contravened in respect of an incorporated limited partnership –
 - (a) the partnership;
 - (b) the liquidator; and
 - (c) each general partner of the partnership who knowingly and wilfully permits the contravention,shall be guilty of an offence and liable to a fine.

65 Liability of present and past partners

- (1) Except as otherwise provided by this Regulation, where an incorporated limited partnership is wound up, each present and past partner of the partnership is liable to contribute to its assets to an amount sufficient for payment of its liabilities and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.
- (2) A contribution shall not be required from any present or past limited partner, as such a partner, exceeding the amount for which, by virtue of Articles 17 and 18 of the Law, he or she is liable to the partnership.
- (3) A past partner is not liable to contribute –
 - (a) unless it appears to the Royal Court that the present partners are unable to satisfy the contributions required to be made by them as partners;
 - (b) if he or she ceased to be a partner 12 months or more before the commencement of the winding up; or
 - (c) in respect of a liability of the incorporated limited partnership contracted after he or she ceased to be a partner.
- (4) A sum due to a partner of the 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.

66 Bar against other proceedings in bankruptcy

The winding up of an incorporated limited partnership under this Law bars the right to take any other proceedings in bankruptcy, except the right of a creditor or the partnership to apply for a declaration under the Bankruptcy (Désastre) (Jersey) Law 1990.

67 Disposal of records

- (1) When an incorporated limited partnership has been wound up and is about to be dissolved, its records and those of a liquidator may be disposed of as follows –
 - (a) in the case of a summary winding up, in the way that the general partners direct; and
 - (b) in the case of a creditors' winding up, in the way that the liquidation committee or, if there is no such committee, the partnership's creditors, may direct.
- (2) After 10 years from the incorporated limited partnership's dissolution, no responsibility rests on the partnership, a liquidator, or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

- (3) The Commission may direct that the records of an incorporated limited partnership that has been wound up shall not be destroyed for such period as the Commission thinks proper (but not exceeding 10 years from that partnership's dissolution).
- (4) A person who acts in contravention of a direction made for the purposes of this Regulation, shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

PART 6

OTHER PROVISIONS

68 Registrar's powers to strike off register

- (1) If the registrar has reason to believe that an incorporated limited partnership is not carrying on business or is not in operation –
 - (a) the registrar may send to it a letter inquiring whether it is carrying on business or is in operation; and
 - (b) if the registrar receives an answer to the effect that the partnership is not carrying on business or is not in operation, or if the registrar does not within one month after sending the letter receive an answer, the registrar may publish in the Jersey Gazette and send to the partnership a notice under paragraph (4).
- (2) If, where an incorporated limited partnership is being wound up in a creditors' winding up, the registrar has reason to believe either that no liquidator is acting or that the affairs of the partnership are fully wound up, and a return that under Regulation 37 is to be made by the liquidator has not been made for a period of 6 consecutive months, the registrar shall publish in the Jersey Gazette and send to the partnership or the liquidator (if any) a notice under paragraph (4).
- (3) If the registrar has reason to believe that an incorporated limited partnership that is being wound up summarily has for a period of 6 months failed to comply with Regulation 12(1), he or she shall publish in the Jersey Gazette and send to the partnership or the liquidator (if any) a notice under paragraph (4).
- (4) A notice to which paragraph (1), (2) or (3) refers shall state that at the end of the period of 3 months following the date of the notice, the name of the incorporated limited partnership will be struck off the register and the partnership will be dissolved unless –
 - (a) where the notice relates to non-compliance with a requirement of this Law, that requirement is complied with; or
 - (b) in any other case, reason is shown by the partnership or any of its partners, or any creditor or liquidator of the partnership, why the partnership's name should not be struck off the register and the partnership should not be dissolved.
- (5) If the condition in paragraph (4) (a) or (b) (as the case may be) has not been satisfied before the end of the period mentioned in the notice, the

registrar may strike the incorporated limited partnership's name off the register.

- (6) On the striking of the incorporated limited partnership's name off the register under paragraph (5), the partnership shall by operation of this Regulation be dissolved; but the liability (if any) of each partner of the partnership shall nevertheless continue and may be enforced as if the partnership had not been dissolved.
- (7) On striking an incorporated limited partnership's name off the register under paragraph (5), the registrar shall publish notice of that fact in the Jersey Gazette.
- (8) A notice to be sent under this Regulation to an incorporated limited partnership or a liquidator may be sent by post, and in the case of a liquidator may be addressed to him or her at his or her last known place of business.

69 Power of Royal Court to declare dissolution void

- (1) Where an incorporated limited partnership has been dissolved under these Regulations or the Bankruptcy (Désastre) (Jersey) Law 1990, the Royal Court may at any time within 10 years of the date of the dissolution, on an application made for the purpose by –
 - (a) a liquidator of the partnership; or
 - (b) any other person appearing to the court to be interested,make an order, on such terms as the court thinks fit, declaring the dissolution to have been void, and the court may by the order give such directions and make such provisions as seem just for placing the partnership and all other persons in the same position as nearly as may be as if the partnership had not been dissolved.
- (2) Thereupon such proceedings may be taken that might have been taken if the incorporated limited partnership had not been dissolved.
- (3) The person on whose application the order was made shall within 14 days after the making of the order (or such further time as the Royal Court may allow), deliver the relevant Act of the court to the registrar for registration.
- (4) A person who fails to comply with paragraph (3) shall be guilty of an offence and liable to a fine of level 3 on the standard scale.
- (5) Paragraph (6) applies where –
 - (a) an order is made under this Regulation that declares that the dissolution of an incorporated limited partnership dissolved under Regulation 9 or 12 is void; and
 - (b) the partnership's assets (if any) at the time of its dissolution were not sufficient for the discharge of all its liabilities at that time.
- (6) The Royal Court on the application of a creditor of the incorporated limited partnership may order –
 - (a) a person to whom any assets were distributed under Regulation 10 or 11; and

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- (b) any general partner or liquidator who signed a statement delivered to the registrar under Regulation 4 or 12 that the partnership had no liabilities,
- to contribute to the partnership's assets so as to enable the insufficiency mentioned in paragraph (5)(b) to be met.
- (7) Paragraph (6)(b) does not include a person who shows that he or she had reasonable grounds for being satisfied when signing the statement mentioned in that paragraph that the incorporated limited partnership had no liabilities.
- (8) A person mentioned in paragraph (6)(a) is liable to contribute an amount not exceeding the amount or value of the assets that were distributed to the person.
- (9) A general partner or liquidator mentioned in paragraph (6)(b) may be ordered, jointly and severally with any other person who is liable to contribute under this Regulation, to contribute an amount not exceeding the insufficiency mentioned in paragraph (5)(b).
- (10) Where a person has contributed an amount under this Regulation, the Royal Court may direct any other person who is jointly and severally liable to contribute under this Regulation to pay to him or her such amount as the court thinks just and reasonable.
- (11) Regulation 65 does not apply in relation to liability accruing by virtue of this Regulation.

70 Citation and commencement

- (1) These Regulations may be cited as the Incorporated Limited Partnerships (Jersey) Regulations 201-.
- (2) These Regulations shall come into force on the same day as Article 3 of the Law.

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- ¹ *L.5/2011*
 - ² *L.5/2011*
 - ³ *chapter 04.160*