

**DRAFT LIMITED LIABILITY PARTNERSHIPS (INSOLVENT PARTNERSHIPS) (JERSEY) REGULATIONS
199**

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by the Finance and Economics Committee**



STATES OF JERSEY

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Report

1. The Limited Liability Partnerships (Jersey) Law 1997 (the Law) requires an Act of the States before it can be brought into force. The Act is only now being placed before the States for consideration because it was, in the view of the Finance and Economics Committee, important first to complete the legislation by enacting Regulations relating to insolvent limited liability partnerships (LLPs). This was envisaged in Article 44 of the Law which is the principal enabling Article under which the Regulations now before the States would become law.
2. The 1996 Strategic Policy Review and Action Plan, in Appendix 3.2 detailing the Legislation Programme contained an allocation of law drafting time for the purpose of drafting these Regulations. The underlying estimate was a time of 15 working days and to date 13 working days have been utilised.
3. In deciding how to proceed with the drafting of the Regulations, the Committee decided late in 1996 to seek the assistance of Mourant du Feu and Jeune and their clients, Price Waterhouse and Ernst and Young in the preparation, by the Committee's officers, of the Law Draftsman's brief. That assistance was provided free of charge and the Committee has also had access on the same basis to further legal advice in London through the offices of those firms and has benefited from their input into the detailed scrutiny and review of successive drafts undertaken principally by the Committee's officers and in the later stages by the Law Officers of the Crown.
4. The basic policy objective adopted for the Regulations was that these should contain clear statements of the procedures which should be followed, in the interests of creditors, on an LLP becoming insolvent and that the powers, authorities, duties and obligations of the person responsible for the winding-up of an insolvent LLP should be very similar, apart from necessary modifications, to those available at present under Jersey law in respect of an insolvent Jersey incorporated limited liability company.
5. The draft Regulations were released to the following finance industry representative bodies in October 1997 and a consultative period of six weeks was allowed –

Jersey Taxation Society
Jersey Society of Chartered and Certified Accountants
Institute of Directors (Jersey)
Financial and Commercial Law Sub-Committee of the Jersey Law Society
Jersey Law Society
Jersey Bankers Association
Institute of Chartered Secretaries and Administrators (Jersey)
Jersey Chamber of Commerce Financial Services Sub-Committee
Jersey Association of Trust Companies
Association of Solicitors of the Supreme Court of England and Wales practising in Jersey

In addition, copies of the draft Regulations were made available to others both inside and outside the Island who had been involved with the Law and on demand. The comments of all consultees have been carefully considered and, where appropriate, acted upon.

6. In addition, the draft Regulations have been duly considered by the Jersey Financial Services Commission Organising Committee.
7. There are only four Regulations although the supporting Schedules are extensive.
8. The first Regulation makes a technical amendment to Article 6 of the Law so as to ensure that the "insolvency manager" of an insolvent LLP is the person to whom the financial provision must be paid in accordance with that Article where an insolvency arises. The financial provision (in the amount of £5 million) is required to be maintained by an LLP through the period of its registration and is to be available, without set-off or retention of any kind, to creditors upon dissolution of the LLP.
9. Regulation 2 gives effect to the First Schedule to the Regulations which lists each modification to Part V of the Law (Part V deals with dissolution and winding up) when that Part is being applied to an insolvent LLP. An insolvent LLP is defined in Article 1(2) of the Law as follows–

"For the purposes of this Law, a limited liability partnership is insolvent if it is unable to discharge its debts, including any liability to a partner or former partner by way of loan but excluding any liability to a partner or former partner in respect of his partnership interest or otherwise, as they fall due."

The Explanatory Note prepared by the Law Draftsman deals in some detail, item by item, with the First Schedule.

10. Regulation 3 gives effect to the Second Schedule which, for the convenience of those using the Law and the Regulations, sets out Part V of the Law as modified by the First Schedule. The Second Schedule will therefore be useful to States members in setting out in full the provisions relating to the dissolution and winding up etc. of insolvent LLPs. Words added by the Regulations are in square brackets and asterisks have been inserted where words have been deleted.
11. The fourth Regulation provides the name under which the Regulations may be cited and also states that they will come into force on the same day as the Law.
12. The Finance and Economics Committee is currently placing before the States for debate a draft Act specifying 1st March 1998 as the commencement date for the Law.
13. Members will no doubt be aware that the new Government in the United Kingdom on 22nd May 1997 announced that it intended to publish a draft Bill on limited liability partnerships before such a Bill is introduced to Parliament. The Government indicated that this would allow more time for public scrutiny and consultation in an area where there is a measure of cross party agreement that change is necessary and where there is scope for further consideration on the best way forward. Work is at present proceeding on this legislation and the draft Bill is being prepared in the light of responses to last year's LLP policy consultation so that input can be received on the details of the drafting.
14. On 4th March 1998 the United Kingdom Government released a consultative document entitled "Modern Company Law For a Competitive Economy". It contained a chapter on the international picture with regard to developments world wide in the context of business structures and expressed the view that British enterprise had not shown itself slow in the past to make use of legal structures and institutions in other countries when what has been required has not been available in domestic law. The document continued with the following paragraphs –
 - “4.6 A more recent example is provided by the absence of a legal structure in this country under which professional partnerships can limit their liability. This was leading a number of businesses to consider setting up under the law of other countries, where limited liability vehicles are available. The Government is currently preparing proposals for a new structure, which will be known as the Limited Liability Partnership.
 - 4.7 These examples show that a failure to provide the right form of company structure for carrying on business will, in time, be reflected in a drift towards those countries which offer what is required. Any migration of British business to vehicles established under foreign law will tend to impose costs on those businesses, make harder the application of our own law, reduce the business available to British professional advisers and cause a drift of head office functions to those other countries. Conversely we may hope to increase business for United Kingdom professional advisers, and attract head office functions to these shores, if United Kingdom legislation offers foreign businessmen attractive vehicles for business. The Government sees a cost effective and competitive company law framework as an essential part of a successful economy.”.
15. The position in the United States is as follows –
 - (i) as of 1st January 1998, 48 states and the District of Columbia had enacted LLP legislation. The only states which have not done so are Vermont and Wyoming;
 - (ii) of the 49 LLP statutes, 20 are "full shield" statutes and 29 are "partial shield" statutes. The LLP legislation which was initially enacted in the United States by various states was partial shield legislation. In recent years, there has been a definite trend toward the enactment of full shield statutes. In that regard, not only have recently enacted statutes been full shield statutes, but states which initially enacted partial shield statutes, have been moving to a "second generation" LLP statute which shifts from a partial shield approach to a full shield statutory approach;
 - (iii) a "partial shield" statute is one which protects the partners of a partnership from liability to a limited extent, i.e., typically a partial shield statute protects partners from liability for negligence, wrongful acts and misconduct, but not, for example, from contractual obligations. A "full shield" LLP statute (similar to the Jersey Law) protects partners from all types of liability, i.e. typically, a full shield LLP statute would protect partners from liability for any debt, obligation or other liability of a partnership, whether arising in contract, tort or otherwise. Both with respect to a partial shield LLP statute and a full shield LLP statute, a partner would

be liable for the consequences of his or her own actions;

- (iv) of the 49 LLP statutes, 14 have an insurance or other financial responsibility requirement (similar to the financial provision arrangement in the Jersey Law), while 35 do not have any such requirement.

Explanatory Note

The purpose of these draft Regulations is to amend Article 6 and modify Part V of the Limited Liability Partnerships (Jersey) Law 1997 (“the principal Law”) in its application to insolvent limited liability partnerships.

Regulation 1 amends Article 6 of the principal Law (Requirement for and payment of financial provision). The amendment is consequential upon the modifications of Part V in that it provides for payment of the financial provision to the insolvency manager where such a person has been appointed to wind up the affairs of an insolvent limited liability partnership.

Regulation 2 gives effect to the First Schedule, in which the modifications of Part V of the principal Law are specified.

Regulation 3 gives effect to the Second Schedule, in which the text of Part V of the principal Law is set out as modified.

Regulation 4 is the citation and commencement provision.

The modifications specified in the *First Schedule* are as follows.

Paragraph 1 inserts a new Article 20A containing definitions in the principal Law.

Paragraph 2 deletes Article 24 of the principal Law, which would otherwise allow two or more of the partners in an insolvent limited liability partnership to acquire the interests of the remaining partners and continue the partnership.

Paragraph 3 modifies Article 25 of the principal Law (Winding up). The right of a creditor to apply to the court for appointment of a person responsible for winding up the affairs of the limited liability partnership is removed as the only function of that person is to make the arrangements leading to the appointment of an insolvency manager. The duty of the person responsible for winding up the affairs of a limited liability partnership ends when an insolvency manager is appointed for that partnership, the authority of the partners in the limited liability partnership to bind that partnership ends upon its insolvency and, where an insolvent limited liability partnership ceases to have two or more partners, the partnership property will vest in the insolvency manager if one has been appointed.

Paragraph 4 adds seven articles applicable to insolvent limited liability partnerships.

Article 25A sets out the procedure to be followed by the person responsible for winding up the affairs of the partnership if it is either insolvent at dissolution or becomes insolvent following dissolution. That person must notify the registrar of the insolvency of the partnership and call a creditors’ meeting, at which he must also preside.

Article 25B states the voting and quorum requirements at a creditors’ meeting.

Article 25C provides that, at the creditors’ meeting, the creditors may nominate an insolvency manager. The person responsible for winding up the affairs of the limited liability partnership may also nominate an insolvency manager. If both parties nominate the same person he is appointed with effect from the end of the meeting. If different persons are nominated, an application may be made to the Royal Court (“the Court”) for it to make an appointment. When the insolvency manager is appointed, the powers of the person responsible for winding up the affairs of the limited liability partnership end and any property vested in him, any financial provision paid to him and any partnership proceedings continued or commenced against him are vested in and paid to and may be continued or commenced against the insolvency manager.

Article 25D enables the creditors at the meeting to appoint an insolvency committee. The partners of the insolvent limited liability partnership may also appoint persons to act as members of the committee, but the creditors may resolve that such persons should not be members. In that case, the persons appointed by the partners can only be members of the committee if the Court so directs.

Article 25E states that the insolvency manager may be paid for his work. Ordinarily his remuneration is agreed with the insolvency committee. The creditors may remove the insolvency manager from his post and fill any vacancy in the post, unless the manager was appointed by the Court.

Article 25F empowers the Court to appoint an insolvency manager where there is none, and to remove an insolvency manager and appoint a replacement.

Article 25G makes provision as to the powers of the person responsible for winding up the affairs of an insolvent limited liability partnership before an insolvency manager is appointed. Such powers can only be exercised with the sanction of court, to comply with the requirement to call the creditors’ meeting or to protect the partnership property.

Paragraph 5 substitutes Article 26 of the principal Law. The substituted Article enables the insolvency manager, a partner or creditor of the partnership to apply to the Court for the Court to settle any question arising in the insolvent winding up or to exercise any powers which it or the Viscount could exercise under the Bankruptcy (Désastre) (Jersey) Law 1990 (“the 1990 Law”).

Paragraph 6 modifies Article 27 of the principal Law (Application of financial provision) to reflect the fact that, in relation to an insolvent limited liability partnership, it will be the insolvency manager or, if the limited liability partnership is subject to a “désastre” the Viscount, who will pay out the financial provision.

Paragraph 7 adds two Articles applicable to insolvent limited liability partnerships. Article 27A has the effect that the rules as to proving debts, the order of payment of debts and related matters which apply in a “désastre” are applied for the purposes of an insolvent winding up save that liabilities to partners and former partners rank behind other creditors. The rules are also applied for the purposes of the payment of the financial provision under Article 27, save that the insolvency manager or Viscount’s fees, as the case may be, are not paid out of the financial provision and no priority is given to debts which would otherwise have such priority by virtue of Article 32(1)(b) and (c) of the 1990 Law. Article 27B describes the circumstances in which an arrangement between an insolvent limited liability partnership and its creditors will be binding.

Paragraph 8 modifies Article 28 of the principal Law (Settling accounts on winding up) to take account of the fact that under the 1990 Law rules for the order of payment of debts, priority is given to certain creditors, and to provide for costs incurred in an insolvent winding up to constitute a debt of the partnership.

Paragraph 9 inserts Articles 28A, 28B and 28C. Article 28A requires the insolvency manager, where an insolvent winding up continues for more than a year, to call meetings of the partners and creditors and report to them, either annually or within such longer period as the Finance and Economics Committee (“the Committee”) may allow. Article 28B requires the insolvency manager to report upon the winding up, including the disposal of the financial provision and the limited liability partnership property, and to call meetings of the partners and the creditors respectively at which he must explain the report. Article 28C requires the Viscount, in a “désastre” of an insolvent limited liability partnership, to report upon the disposal of the financial provision.

Paragraph 10 modifies Article 29 of the principal Law (Completion of winding up) so as to require the insolvency manager to notify the registrar that the meetings required under Article 28B have been held.

Paragraph 11 modifies Article 30 of the principal Law (Effect of declaration that a partnership is “en désastre”) so as to make it clear that Article 28 as modified applies to an insolvent limited liability partnership subject to a “désastre”.

Paragraph 12 substitutes Article 31 of the principal Law (Cancellation of registration following winding up etc.) with the effect that, in the case of an insolvent limited liability partnership, registration of a partnership is cancelled three months after the notice required under Article 29 as modified is given or, if the insolvent partnership is subject to a “désastre”, the notice that the “désastre” is complete, has been given. In addition, the insolvency manager, Viscount or another person interested in the insolvency may apply to the Court for the cancellation of registration to be deferred.

Paragraph 13 adds new Articles to Part V applicable in the course of the winding up of an insolvent limited liability partnership.

Article 31A empowers the insolvency manager to pay creditors, and to do anything that may be needed for the beneficial winding up of the partnership.

Article 31B empowers the insolvency manager to disclaim onerous limited liability partnership property within the sixth months following the start of the insolvent winding up. A person caused loss by the disclaimer becomes a creditor of the partnership to the extent of that loss.

Article 31C empowers the Court to make an order for the vesting or delivery of disclaimed property in or to the person entitled to it or any person under a liability in respect of it.

Article 31D has the effect that a lien on records of an insolvent limited liability partnership shall not prevent the insolvency manager obtaining possession of them.

Article 31E makes provision in relation to transactions at an undervalue and preferences. It applies to any transaction at an undervalue entered into by the limited liability partnership in the two years before the start of the insolvent winding up and to any transaction at an undervalue entered into between two and five years before the start of the insolvent winding up if, at the

time of the transaction, the partnership was insolvent, and to any preference (being an arrangement that places a person in a better position, in the event of the insolvency of the partnership, than he would have been in if the arrangement had not been made) given during the year preceding the start of the insolvent winding up if, at the time, the partnership was insolvent. Where any such transaction has been entered into or any such preference given by the partnership, the insolvency manager can apply to the Court and the Court may make an order restoring the position to what it would have been if the transaction had not been entered into or the preference given.

Article 31F empowers the Court to make a partner or former partner in an insolvent limited liability partnership personally liable for debts of the partnership arising after the time when that person knew that the partnership could not avoid insolvency or was reckless as to whether the partnership would avoid insolvency and before the start of the insolvent winding up. No order will be made if the partner or former partner tried to minimise the potential loss to creditors of the partnership.

Article 31G empowers the Court to order a person to contribute to the assets of an insolvent limited liability partnership if that person knowingly was a party to the carrying on of the limited liability partnership business with intent to defraud creditors or for another fraudulent purpose. If the person found to have been a party to the fraudulent trading is a creditor of the limited liability partnership, the Court may direct that any debt owed to him by the partnership shall rank after all other debts owed by the partnership.

Article 31H applies where an insolvent limited liability partnership has been a party to an extortionate credit transaction within the three years preceding the start of the insolvent winding up. In such a case the Court may make an order setting aside or varying the transaction, requiring a person to pay to the insolvency manager sums received by him under the transaction and requiring a person to surrender property held as security for the transaction to the insolvency manager.

Article 31J applies Articles 31F, 31G and 31H to an insolvent limited liability partnership which is subject to a “désastre”.

Article 31K empowers the Court to order the delivery to the insolvency manager of property and records to which the insolvent limited liability partnership appears to be entitled.

Article 31L imposes a duty on partners, former partners, employees and certain former employees of an insolvent limited liability partnership to co-operate with the insolvency manager by providing him with such information concerning the partnership as he may reasonably require.

Article 31M imposes a duty on the insolvency manager to report possible criminal offences to the Attorney General and provide the Attorney General with such relevant information and documents as he requires. The Attorney General may report a possible criminal offence to the Committee and the Committee shall investigate the matter and may appoint an inspector to do so on its behalf.

Article 31N empowers the Committee or an inspector, for the purposes of an investigation, to require the production of records, require a person to appear before them, examine persons on oath and require the production of records relating to bank accounts. If the Attorney General commences criminal proceedings following a report under Article 31M, the insolvency manager and the partners, agents and employees of the limited liability partnership are under a duty to assist him and, if any person fails to give such assistance, the Court may direct him to comply.

Article 31P enables an inspector carrying out an investigation for the Committee to apply to the Bailiff for a search warrant if the investigation might be seriously prejudiced by a failure to gain entry to premises on which relevant material is thought to be held.

Article 31Q makes failure to co-operate with the Committee or an inspector carrying out an investigation for it an offence punishable as if it were contempt of court.

Article 31R enables a copy of an inspector’s report certified by the Committee to be admitted as evidence.

Article 31S makes it clear that the powers of investigation do not require the disclosure of information protected by legal professional privilege or in the case of information held by a bank, information relating to a customer other than the person under investigation.

Article 31T empowers the Court to order the insolvency manager or a partner in the insolvent limited liability partnership to make good any failure to deliver documents or give any notice which he is required by law to give.

Article 31U states the qualifications that a person must have to be an insolvency manager. The Committee is given power to amend the qualifications by Order.

Article 31V makes it an offence for a person to give or offer an inducement to a partner in or creditor of an insolvent limited liability partnership with a view to securing his appointment or the appointment of another as insolvency manager.

Article 31W requires an insolvency manager who leaves his office for any reason to give notice to the registrar and the creditors.

Article 31X requires every document issued by or on behalf of an insolvent limited liability partnership which is being wound up to contain a statement that the partnership is subject to an insolvent winding up.

Article 31Y has the effect that an insolvent winding up bars the right to take any other bankruptcy proceedings, except the right of a creditor to apply for a declaration that the partnership is “en désastre”.

Article 31Z makes provision for the disposal of the records of an insolvent limited liability partnership which has been wound up at the direction of the insolvency committee or, if none, the creditors. The Committee may direct that, for a specified period, not exceeding 10 years, the records of the insolvent limited liability partnership shall not be destroyed.

In the *Second Schedule*, Part V of the principal Law as modified by the *First Schedule* is set out. The modifications appear in square brackets.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2000 and level 4 is £5000.

Limited Liability Partnerships (Jersey) Law 1997

LIMITED LIABILITY PARTNERSHIPS (INSOLVENT PARTNERSHIPS) (JERSEY) REGULATIONS 199

(Promulgated on the _____ day of _____ 199)

STATES OF JERSEY

The _____ day of _____ 199

THE STATES, in pursuance of Articles 44 and 45 of the Limited Liability Partnerships (Jersey) Law 1997^[1] (hereinafter referred to as “the principal Law”), have made the following Regulations –

1. In Article 6 of the principal Law^[2] (Requirement for and payment of financial provision), after paragraph (8) there shall be inserted the following paragraph –

“(8A) In this Article, in the case of an insolvent limited liability partnership being wound up in accordance with Part V as modified by Regulations made under Article 44, after the appointment of an insolvency manager pursuant to that Part as so modified, any reference to the person responsible for winding up the affairs of the limited liability partnership shall be construed as a reference to the insolvency manager so appointed.”.

2. Part V of the principal Law (Dissolution and winding up, etc.) shall have effect in its application to insolvent limited liability partnerships with the modifications specified in the First Schedule.

3. Part V of the principal Law, as modified in its application to insolvent limited liability partnerships, is set out in the Second Schedule.

4. These Regulations may be cited as the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 199 and shall come into force on the same day as the principal Law.

FIRST SCHEDULE

(Regulation 2)

MODIFICATIONS OF PART V OF THE PRINCIPAL LAW IN ITS APPLICATION TO INSOLVENT LIMITED LIABILITY PARTNERSHIPS

1. Before Article 20 of the principal Law there shall be inserted the following Article –

“ARTICLE 20A

Interpretation of Part V

In this Part –

“insolvency manager” means, in relation to an insolvent limited liability partnership, the person for the time being appointed under Article 25C, 25E or 25F to be responsible for its insolvent winding up;

“insolvency committee” means, in relation to an insolvent limited liability partnership, the committee appointed under Article 25D.”.

2. Article 24 of the principal Law (Continuation of partnership following dissolution) shall be deleted.
3. In Article 25 of the principal Law (Winding up) –
- (a) in paragraph (1) for the words “Subject to paragraph (2) and Article 24” there shall be substituted the words “Subject to paragraph (2) of this Article and to paragraph (4) of Article 25C”;
- (b) in paragraph (2) –
- (i) at the beginning there shall be inserted the words “Subject to paragraph (2A),”, and
- (ii) sub-paragraph (b) shall be deleted;
- (c) after paragraph (2) there shall be inserted the following paragraph –
- “(2A) No appointment may be made pursuant to paragraph (2) in respect of an insolvent limited liability partnership after an insolvency manager is first appointed for it.”;
- (d) at the beginning of paragraph (3) there shall be inserted the words “Subject to paragraph (3A),”;
- (e) after paragraph (3) there shall be inserted the following paragraph –
- “(3A) Where the limited liability partnership is insolvent on dissolution or becomes insolvent following dissolution, notwithstanding that a partner continues to be an agent of the partnership, his ability to bind the partnership shall cease.”;
- (f) at the beginning of each of paragraphs (4), (5) and (6) there shall be inserted the words “Subject to paragraph (6A),”;
- (g) after paragraph (6) there shall be inserted the following paragraph –
- “(6A) Where an insolvent limited liability partnership ceases to have two or more partners at any time following its dissolution and following the appointment of an insolvency manager for it, paragraphs (4), (5) and (6) shall apply as if any reference in them to the person responsible for winding up the affairs of the limited liability partnership was a reference to the insolvency manager.”
4. After Article 25 of the principal Law there shall be inserted the following Articles –

“ARTICLE 25A

Partnership insolvent upon or following dissolution

(1) Where a limited liability partnership is insolvent upon dissolution or becomes insolvent following dissolution, the person responsible for winding up its affairs –

(a) shall swear an affidavit recording his opinion that the partnership is insolvent and deliver a copy of the affidavit to the registrar –

(i) where the limited liability partnership is insolvent upon dissolution, within seven days of the dissolution, or

(ii) where the limited liability partnership becomes insolvent following dissolution, within seven days of the insolvency;

and

(b) shall –

(i) by not less than 14 days' notice given by post, call a meeting of the creditors of the limited liability partnership, to be held within the Island within 28 days after that affidavit is sworn and, in the notice, nominate an insolvency manager,

(ii) when that notice is given to the creditors, deliver a copy of it to the registrar,

(iii) not less than 10 days before the day for which the meeting is called, give notice of the meeting by advertisement in the Jersey Gazette,

(iv) during the period before the creditors' meeting is held, furnish any creditor free of charge with such information concerning the affairs of the limited liability partnership as he may reasonably request, and

(v) make out a statement as to the affairs of the limited liability partnership, verified by affidavit, and lay that statement before the creditors' meeting.

(2) If the person responsible for winding up the affairs of the limited liability partnership is qualified for appointment as its insolvency manager, he may nominate himself under clause (i) of sub-paragraph (b) of paragraph (1).

(3) The person responsible for winding up the affairs of the limited liability partnership shall preside at the creditors' meeting.

(4) The insolvent winding up of a limited liability partnership commences –

(a) where the partnership is insolvent upon dissolution, on the day of dissolution; and

(b) where the partnership becomes insolvent following dissolution, on the day on which the creditors' meeting is held.

(5) If default is made in compliance with this Article, the person responsible for winding up the affairs of the limited liability partnership is guilty of an offence and liable to a fine.

ARTICLE 25B

Procedure and quorum at creditors' meeting

(1) Subject to paragraphs (2), (3) and (4), every creditor who has been given notice of a creditors' meeting shall be entitled to vote at the meeting or any adjournment of it.

(2) Votes shall be calculated according to the amount of the creditor's debt on the day the insolvent winding up commences.

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the person responsible for winding up the affairs of the limited liability partnership agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote.

(4) For any resolution to pass at the creditors' meeting there must be a majority in excess of one half in value of the creditors present in person or by proxy and voting on the resolution.

(5) A creditors' meeting shall not be competent to act unless there are present in person or by proxy at least three creditors, or all of the creditors, if their number does not exceed three, being in either case entitled to vote.

ARTICLE 25C

Appointment of insolvency manager

(1) The creditors at a creditors' meeting may nominate an insolvency manager.

(2) The person nominated by the creditors to be insolvency manager or, if none, the person nominated by the person responsible for winding up the affairs of the limited liability partnership, is appointed with effect from the conclusion of the creditors' meeting.

(3) In the case of different persons being nominated, a creditor or partner of the limited liability partnership or the person responsible for winding up its affairs may, within seven days after the day on which the nomination was made by the creditors, apply to the Court for an order either –

(a) directing that the person nominated by the person responsible for winding up the affairs of the limited liability partnership shall be the insolvency manager instead of or jointly with the person nominated by the creditors; or

(b) appointing some other person to be the insolvency manager.

(4) Upon the appointment of the insolvency manager –

(a) all the powers and duties of the person responsible for winding up the affairs of the limited liability partnership shall cease;

(b) any limited liability partnership property and any beneficial interest of the limited liability partnership in any limited liability partnership property vested in the person responsible for winding up the affairs of the limited liability partnership pursuant to sub-paragraph (b) of paragraph (4) of Article 25 shall vest in the insolvency manager;

(c) any proceedings which might have been continued or commenced against the person responsible for winding up the affairs of the limited liability partnership pursuant to sub-paragraph (c) of paragraph (4) of Article 25 may be continued or commenced against the insolvency manager in his capacity as such; and

(d) any amount paid to the person responsible for winding up the affairs of the limited liability partnership pursuant to paragraph (2) or (5) of Article 6 shall be paid to the insolvency manager.

(5) Where the name of the person responsible for winding up the affairs of the limited liability partnership is inscribed in the Public Registry of Contracts as the holder of or having an interest in immoveable property which vests in the insolvency manager by virtue of sub-paragraph (b) of paragraph (4), the insolvency manager shall deliver to the Judicial Greffier notice of the name of the insolvency manager, in whom the property has vested, within 28 days after the property so vests.

(6) Any judgment obtained against the insolvency manager in his capacity as such in any proceedings continued or commenced in accordance with sub-paragraph (c) of paragraph (4) shall only be enforceable against the limited liability partnership property.

(7) The insolvency manager shall, within 14 days of his appointment, deliver notice thereof to the registrar and to the creditors.

(8) If default is made in compliance with paragraph (5) or (7), the insolvency manager is guilty of ar

offence and liable to a fine not exceeding level 4 on the standard scale and, in the case of a continuing offence, to a further fine not exceeding level 2 on the standard scale for each day on which the offence so continues.

ARTICLE 25D

Appointment of insolvency committee

(1) A creditors' meeting may appoint an insolvency committee consisting of not more than five persons to exercise the functions conferred on it by this Part.

(2) If a committee is appointed, the partners of the limited liability partnership may appoint such number of persons not exceeding five as they think fit to act as members of the committee.

(3) The creditors may resolve that all or any of the persons so appointed by the partners 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 Court otherwise directs, qualified to act as members of the committee; and
- (b) on an application to the Court under this provision, the Court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

ARTICLE 25E

Remuneration of and vacancy in office of insolvency manager

(1) An insolvency manager is entitled to receive such remuneration as is agreed between him and the insolvency committee or, if there is no committee, between him and the creditors or, failing any such agreement, as is fixed by the Court.

(2) The creditors may at any time remove the insolvency manager (other than such a person appointed by the Court).

(3) If a vacancy occurs, by death, resignation or otherwise, in the office of the insolvency manager (other than such a person appointed by the Court) the creditors may appoint another insolvency manager.

(4) Where a vacancy in the office of insolvency manager is filled, either by appointment of the creditors or of the Court, paragraphs (4), (5), (6), (7) and (8) of Article 25C shall apply for the purposes of notification of the appointment to the registrar and the vesting of such property in, the continuation and commencement of such proceedings against and the payment of any amount to the new insolvency manager as was formerly vested in or might have been continued or commenced against or paid to the previous insolvency manager in his capacity as such, as if any reference in them to the person responsible for winding up the affairs of the limited liability partnership were a reference to the previous insolvency manager and any reference to the insolvency manager were a reference to the new insolvency manager.

ARTICLE 25F

Appointment or removal by the Court of insolvency manager

(1) If for any reason there is, in an insolvent winding up, no insolvency manager, the Court may appoint such a person.

(2) The Court may, on reason being given, remove an insolvency manager and appoint another.

ARTICLE 25G

No insolvency manager appointed

(1) This Article applies where an insolvent winding up has commenced but no insolvency manager has been appointed.

(2) During the period before the appointment of an insolvency manager, the powers of the person responsible for winding up the affairs of the limited liability partnership shall not be exercised except –

- (a) with the sanction of the Court;
- (b) to secure compliance with Article 25A; or
- (c) to protect the limited liability partnership property.

(3) If the person responsible for winding up the affairs of the limited liability partnership contravenes paragraph (2) he shall be guilty of an offence and liable to a fine or up to six months' imprisonment or both.”.

5. For Article 26 of the principal Law (Power of Court to give directions as to winding up) there shall be substituted the following Article –

“ARTICLE 26

Reference of questions and powers to the Court

(1) The insolvency manager, a partner in the partnership or a creditor of the partnership may apply to the Court for the Court to determine a question arising in an insolvent winding up, or exercise all or any of the powers which the Court or the Viscount might exercise if a declaration had been made in relation to the limited liability partnership under the Bankruptcy (Désastre) (Jersey) Law 1990. ^[3]

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) An Act of the Court recording the making of an order under this Article staying the proceedings in the winding up shall, within 14 days after the making of the order, be delivered by the insolvency manager, or otherwise as may be ordered by the Court, to the registrar, who shall register it.

(4) If default is made in compliance with paragraph (3), the insolvency manager or other person ordered by the Court to deliver the Act is guilty of an offence and liable to a fine not exceeding level 4 on the standard scale ^[4] and, in the case of a continuing offence, to a further fine not exceeding level 2 on the standard scale for each day on which the offence so continues.”.

6. In Article 27 of the principal Law (Application of financial provision) –

- (a) in paragraph (1) for the words “the person responsible for winding up the affairs of a limited liability partnership” there shall be substituted the words “the insolvency manager or, in the case of an insolvent limited liability partnership declared ‘en désastre’ under the Bankruptcy (Désastre) (Jersey) Law 1990, the Viscount”; and
- (b) in paragraph (3) after the words “in accordance with” there shall be inserted the words “paragraphs (1) and (2) of Article 27A and”.

7. After Article 27 of the principal Law there shall be inserted the following Articles –

“ARTICLE 27A

Application of the law relating to “désastre”

(1) Subject to paragraph (2), in an insolvent 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 proof of debts, to the setting off of debts and, subject to the provision in paragraph (1) of Article 28 for the subordination of liabilities to partners and former partners to liabilities to other creditors, to the order of payment of 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 insolvency manager and to the commencement of the insolvent winding up respectively for references to the Viscount and to

the date of the declaration.

(2) Any surplus remaining after payment of the debts proved in the insolvent winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the insolvent winding up in respect of the period during which they have been outstanding since the commencement of the insolvent winding up and at the rate of interest applicable apart from the winding up.

(3) Paragraphs (1) and (2) shall apply for the purposes of the application of the financial provision pursuant to paragraph (1) of Article 27 as they apply for the purposes of an insolvent winding up, save that—

- (a) no payment shall be made out of the financial provision of any remuneration payable to the insolvency manager or Viscount or any expenses incurred in the insolvent winding up or “désastre”; and
- (b) no priority shall be given in the application of the financial provision to the debts described in sub-paragraphs (b) and (c) of paragraph (1) of Article 32 of the Bankruptcy (Désastre) (Jersey) Law 1990.

(4) Where paragraphs (1) and (2) apply by virtue of paragraph (3) in the case of an insolvent limited liability partnership in respect of which a “désastre” is declared under the Bankruptcy (Désastre) (Jersey) Law 1990 –

- (a) the substitution of references made by paragraph (1) shall not apply; and
- (b) the references in paragraph (2) to the insolvent winding up and the commencement of the insolvent winding up shall be construed respectively as references to the “désastre” and the date of the declaration of the “désastre”.

ARTICLE 27B

Arrangement when binding on creditors

(1) An arrangement entered into between a limited liability partnership immediately preceding the commencement of an insolvent winding up and its creditors is (subject to the right of appeal under paragraph (2)) binding –

- (a) on the limited liability partnership; and
- (b) on the creditors, if acceded to by three-quarters in number and value of them.

(2) A creditor may, within three weeks from the completion of the arrangement, appeal to the Court against it; and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.”.

8. In Article 28 of the principal Law (Settling accounts on winding up) –

- (a) in paragraph (1), at the beginning of sub-paragraph (a) there shall be inserted the words “subject to the provisions of any enactment as to preferential payments,”; and
- (b) after paragraph (2) there shall be added the following paragraph–

“(3) All costs, charges and expenses properly incurred in the winding up of an insolvent limited liability partnership, including the remuneration of the insolvency manager, are payable out of the limited liability partnership property in accordance with paragraph (1) of Article 27A and paragraph (1) of this Article.”.

9. After Article 28 of the principal Law there shall be inserted the following Articles –

“ARTICLE 28A

Meetings of insolvent limited liability partnership and creditors

(1) If an insolvent winding up continues for more than twelve months, the insolvency manager shall call a meeting of the partners in the limited liability partnership and a meeting of the creditors, to be held on the first

convenient date within three months after the end of the first twelve months from the commencement of the insolvent winding up, and of each succeeding twelve months or such longer period as the Committee may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding twelve months.

(2) If default is made in compliance with paragraph (1), the insolvency manager is guilty of an offence and liable to a fine not exceeding level 2 on the standard scale.

ARTICLE 28B

Insolvency manager's report on completion of winding up

(1) As soon as the affairs of an insolvent limited liability partnership are fully wound up, the insolvency manager shall make up an account of the winding up, showing how it has been conducted and how any payment made pursuant to paragraph (2) or (5) of Article 6 and the limited liability partnership property have been disposed of, and thereupon shall call a meeting of the partners in the limited liability partnership and a meeting of its creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by not less than 21 days' notice sent by post, accompanied by a copy of the insolvency manager's account.

ARTICLE 28C

Viscount's report in respect of insolvent limited liability partnership "en désastre"

When, in the case of an insolvent limited liability partnership declared "en désastre" under the Bankruptcy (Désastre) (Jersey) Law 1990, the Viscount supplies the creditors and the Judicial Greffier with a report and accounts relating to the "désastre" under sub-paragraph (a) of paragraph (1) of Article 36 of that Law, he shall also supply an account of how any payment made pursuant to paragraph (2) or (5) of Article 6 of this Law has been disposed of."

10. In Article 29 of the principal Law (Completion of winding up) –

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

“(1) Within seven days after the date of the meetings described in Article 28B (or, if they are not held on the same day, after the date of the later one) the insolvency manager shall deliver to the registrar –

(a) subject to paragraphs (1A) and (1B), a statement signed by him of the holding of the meetings and their dates; and

(b) a copy of his account.

(1A) If a quorum is not present at the creditors' meeting, the insolvency manager shall, in lieu of the statement required by sub-paragraph (a) of paragraph (1), deliver a statement that the meeting was duly called and that no quorum was present.

(1B) If all the partners, or so many of the partners as the partnership agreement requires, are not present at the partners' meeting, the insolvency manager shall, in lieu of the statement required by sub-paragraph (a) of paragraph (1), deliver a statement that the meeting was duly called but not held”;

(b) in paragraph (2) for the words “the person responsible for winding up the affairs of the limited liability partnership” there shall be substituted the words “the insolvency manager”.

11. In Article 30 of the principal Law (Effect of declaration that a partnership is “en désastre”), after paragraph (1) there shall be inserted the following paragraph–

“(1A) For the purposes of paragraphs (1) and (2) of Article 28, an insolvent limited liability partnership in respect of which there is a “désastre” shall be deemed to be subject to a winding up of its affairs.”.

12. For Article 31 of the principal Law there shall be substituted the following Article –

“ARTICLE 31

Cancellation of registration following insolvent winding up etc.

- (1) Upon receipt of –
 - (a) a statement delivered to him under Article 29; or
 - (b) notification under paragraph (3) of Article 36 of the Bankruptcy (Désastre) (Jersey) Law 1990,

in respect of an insolvent limited liability partnership, the registrar shall forthwith register the statement or notification.

(2) Subject to paragraph (3), at the end of three months from the registration of the statement or notification, the registrar shall cancel the entry in the register relating to the limited liability partnership and issue a certificate of cancellation to the insolvency manager or Viscount as the case may require.

(3) The Court may, on the application of the insolvency manager or Viscount, as the case may require, or of another person who appears to the Court to be interested, make an order deferring the date on which a certificate of cancellation of registration is issued to such date as the Court thinks fit.

(4) The person on whose application an order of the Court under paragraph (3) is made shall, within 14 days after the making of the order, deliver to the registrar the relevant Act of the Court for registration.

(5) If default is made in compliance with paragraph (4), the person on whose application the order is made shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale and, in the case of a continuing offence, to a further fine not exceeding level 2 on the standard scale for each day on which the offence so continues.

(6) A certificate issued under paragraph (2) is conclusive evidence as to the cancellation of the registration of the limited liability partnership.”.

13. After Article 31 of the principal Law there shall be added the following Articles –

“ARTICLE 31A

Powers and duties of insolvency manager

(1) An insolvency manager may, with the sanction of the Court or the insolvency 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 limited liability partnership.

(2) An insolvency manager may, without sanction, do anything, other than an act within paragraph (1), that may be required for the beneficial winding up of the limited liability partnership.

(3) An insolvency manager may summon a meeting of the partners of the limited liability partnership for the purpose of obtaining their sanction for any other purpose he may think fit.

(4) The insolvency manager shall pay the debts of the limited liability partnership in accordance with this Part.

(5) The appointment or nomination of more than one insolvency manager 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.

ARTICLE 31B

Power to disclaim onerous property

(1) Subject to this Article, the insolvency manager may, within six months after the commencement of the insolvent winding up, by the giving of notice signed by him and referring to this Article and Article 31C to each person who is interested in or under any liability in respect of the property disclaimed, disclaim any onerous moveable property, or any onerous immovable property situated outside the Island, and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) For the purposes of this Article –

(a) onerous moveable property is any –

(i) unprofitable contract, and

(ii) other moveable property of the limited liability partnership which 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;

(b) onerous immovable property is any immovable property of the limited liability partnership situated outside the Island and having the characteristics mentioned in clause (ii) of sub-paragraph (a).

(3) A disclaimer under this Article –

(a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the limited liability partnership in or in respect of the property disclaimed; but

(b) shall not, except so far as is necessary for the purpose of releasing the limited liability partnership from liability, affect the rights or liabilities of any other person.

(4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Article shall be deemed to be a creditor of the limited liability partnership to the extent of the loss or damage in the winding up.

ARTICLE 31C

Power of Court in respect of disclaimed property

(1) This Article applies where the insolvency manager has disclaimed property under Article 31B.

(2) An application may be made to the Court under this Article by –

(a) a person who claims an interest in the disclaimed property; or

(b) a person who is under a liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(3) Subject to paragraph (4), the Court may, on an application under this Article, 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 sub-paragraph (b) of paragraph (2) or a trustee for such person.

(4) The Court shall not make an order by virtue of sub-paragraph (b) of paragraph (3) 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.

(5) The effect of an order under this Article shall be taken into account in assessing for the purpose of paragraph (4) of Article 31B the extent of loss or damage sustained by a person in consequence of the disclaimer.

ARTICLE 31D

Unenforceability of liens on records

(1) Subject to paragraph (2), in an insolvent winding up, a lien or other right to retain possession of any records of a limited liability partnership shall be unenforceable to the extent that its enforcement would deny possession of those records to the insolvency manager.

(2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

ARTICLE 31E

Transactions at an undervalue and preferences

(1) Subject to this Article, where an insolvent limited liability partnership has at a relevant time –

- (a) entered into a transaction with any person at an undervalue; or
- (b) given a preference to any person,

the insolvency manager may apply to the Court for such order as the Court thinks fit for restoring the position to what it would have been if the limited liability partnership had not entered into that transaction or given that preference, as the case may be.

(2) For the purposes of this Article, a limited liability partnership enters into a transaction with a person at an undervalue if the limited liability partnership –

- (a) makes a gift to that person or otherwise enters into a transaction with that person on terms for which there is no ‘cause’; or
- (b) enters into a transaction with that person for a ‘cause’ the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the ‘cause’ provided by the limited liability partnership.

(3) For the purposes of this Article, a limited liability partnership gives a preference to a person if –

- (a) that person is one of the creditors of the limited liability partnership or a surety or guarantor for any of the debts or other liabilities of the limited liability partnership; and
- (b) the limited liability partnership –
 - (i) does anything, or
 - (ii) suffers anything to be done,

which has the effect of putting that person into a position which, in the event of the insolvent winding up of the limited liability partnership, will be better than the position he would have been in if that thing had not been done.

(4) The Court shall not make an order under this Article in respect of a preference given to any person unless the limited liability partnership which gave it was influenced in deciding to give it by a desire to produce in relation to that person the effect referred to in sub-paragraph (b) of paragraph (3).

(5) Subject to paragraph (6), the time at which a limited liability partnership enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given –

- (a) in the case of a transaction at an undervalue, at a time in the period of five years ending with the date of commencement of the insolvent winding up;
- (b) in the case of a preference which is not a transaction at an undervalue, at a time in the period of one year ending with that date.

(6) Subject to paragraph (7), where a limited liability partnership enters into a transaction at an undervalue or gives a preference at a time mentioned in sub-paragraph (a) or (b) of paragraph (5), that time is not a relevant time unless the limited liability partnership –

- (a) is at that time unable to pay its debts as they fall due; or
- (b) becomes unable to pay its debts as they fall due in consequence of the transaction or preference.

(7) Paragraph (6) shall not apply to a transaction at an undervalue which takes place less than two years before the date of commencement of the insolvent winding up.

- (8) In this Article, 'cause' has the meaning assigned to it by the customary law of this Island.

ARTICLE 31F

Responsibility of persons for wrongful trading

(1) Notwithstanding Article 5 but subject to paragraph(4), if, in the course of an insolvent winding up, it appears that paragraph (2) applies in relation to a person who is or has been a partner of the limited liability partnership, the Court, on the application of the insolvency manager, may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the limited liability partnership arising after the time referred to in paragraph (2).

(2) This paragraph applies in relation to a person if –

- (a) at some time before the date of commencement of the insolvent winding up that person –

- (i) knew that there was no reasonable prospect that the limited liability partnership would avoid insolvency, or
 - (ii) on the facts known to him was reckless as to whether the limited liability partnership would avoid insolvency; and

- (b) that person was a partner in the limited liability partnership at that time.

(3) For the purposes of paragraph (2), a person shall not be treated as having had knowledge of any matter by reason only that another partner in the limited liability partnership had such knowledge.

(4) The Court shall not make an order under paragraph (1) with respect to any person if it is satisfied that after either condition specified in sub-paragraph (a) of paragraph (2) was first satisfied in relation to him that person took reasonable steps with a view to minimizing the potential loss to creditors of the limited liability partnership.

(5) On the hearing of an application under this Article, the insolvency manager may himself give evidence or call witnesses.

(6) For the purposes of the conditions specified in sub-paragraph (a) of paragraph (2) of this Article, limited liability partnership is insolvent if, within the meaning of paragraph (5) of Article 5, it is unable to pay its debts and, for the purpose of determining whether a limited liability partnership is so unable to pay its debts, paragraph (6) of that Article shall also apply as if the reference in it to the person denying liability under paragraph (3) or (4) of that Article were a reference to the person denying responsibility under this Article.

ARTICLE 31G

Responsibility for fraudulent trading

(1) If, in the course of an insolvent winding up, it appears that any business of the limited liability partnership has been carried on with intent to defraud creditors of the limited liability partnership or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the insolvency manager, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the limited liability partnership property as the Court thinks proper.

(2) For the purposes of paragraph (1) a partner in a limited liability partnership shall not be treated as having been knowingly a party to the carrying on of the business in the manner described in that paragraph by reason only that another partner in the limited liability partnership was knowingly such a party.

- (3) On the hearing of an application under this Article the insolvency manager may himself give evidence

or call witnesses.

(4) Where the Court makes an order under this Article or Article 31F, it may give such further directions as it thinks proper for giving effect to the order.

(5) Where the Court makes an order under this Article or Article 31F in relation to a person who is a creditor of the limited liability partnership, it may direct that the whole or part of a debt owed by the limited liability partnership to that person and any interest thereon shall rank in priority after all other debts owed by the limited liability partnership and after any interest on those debts.

(6) This Article and Article 31F have 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.

ARTICLE 31H

Extortionate credit transactions

(1) This Article applies in an insolvent winding up where the limited liability partnership is, or has been, a party to a transaction for, or involving, the provision of credit to the limited liability partnership.

(2) The Court may, on the application of the insolvency manager, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of three years ending with the commencement of the insolvent winding up.

(3) For the purposes of this Article, 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,

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is, or as the case may be, was extortionate.

(4) An order under this Article with respect to a transaction may contain one or more of the following as the 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 insolvency manager sums paid to that person, by virtue of the transaction, by the limited liability partnership;
- (d) provision requiring a person to surrender to the insolvency manager property held by him as security for the purposes of the transaction;
- (e) provision directing accounts to be taken between any persons.

ARTICLE 31J

Application of provisions to insolvent limited liability partnership “en désastre”

Articles 31F, 31G and 31H shall apply to an insolvent limited liability partnership in respect of which a “désastre” is declared under the Bankruptcy (Désastre) (Jersey) Law 1990 as if –

- (a) any reference to an insolvent winding up was a reference to a “désastre”;
- (b) any reference to the insolvency manager was a reference to the Viscount; and

- (c) any reference to the commencement of an insolvent winding up was a reference to the date of the declaration under Article 6 of that Law.

ARTICLE 31K

Delivery and seizure of property

(1) Where a person has in his possession or control property or records to which a limited liability partnership appears in an insolvent winding up to be entitled, the Court may require that person forthwith (or within a period which the Court may direct) to pay, deliver, convey, surrender or transfer the property or records to the insolvency manager.

(2) Where –

- (a) the insolvency manager seizes or disposes of property which is not property of the limited liability partnership; and
- (b) at the time of seizure or disposal the insolvency manager believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the insolvency manager shall not be liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the insolvency manager, and shall have a lien on the property, or the proceeds of its sale, for expenses incurred in connexion with the seizure or disposal.

ARTICLE 31L

Duty to co-operate with insolvency manager

(1) In an insolvent winding up, each of the persons mentioned in paragraph (2) shall –

- (a) give the insolvency manager information concerning the limited liability partnership and its establishment, business, dealings, affairs, or property which the insolvency manager may at any time after the commencement of the insolvent winding up reasonably require; and
- (b) attend on the insolvency manager at reasonable times and on reasonable notice when requested to do so.
- (2) The persons referred to in paragraph (1) are –
- (a) those who are, or have at any time been, partners in the limited liability partnership;
- (b) those who are in the employment of the limited liability partnership, or have been in its employment within one year before the commencement of the insolvent winding up, and are in the opinion of the insolvency manager capable of giving information which he requires; and
- (c) those who are, or have within that year been, partners in or in the employment of another partnership which is or was a partner in the limited liability partnership in question or officers of, or in the employment of any person who is or was a partner in the limited liability partnership in question.

(3) For the purposes of paragraph (2), “employment” includes employment under a contract for services (“*contrat de louage d’ouvrage*”).

(4) Default in compliance with any obligation imposed by this Article is an offence liable to a fine or up to six months’ imprisonment or to both.

ARTICLE 31M

Insolvency manager to report criminal offences

(1) If it appears to the insolvency manager that any person has been guilty of an offence in relation to the limited liability partnership for which that person is criminally liable, he shall –

- (a) forthwith report the matter to the Attorney General; and
- (b) furnish the Attorney General with information and give him access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession of or under the control of the insolvency manager and relating to the matter in question) as the Attorney General requires.

(2) Where a report is made to him under paragraph (1), the Attorney General may refer the matter to the Committee for further enquiry; and the Committee –

- (a) shall thereupon investigate the matter; and
- (b) may also, if they think it necessary for the purposes of their investigation, investigate the affairs of any partner in the limited liability partnership or of any company of which the limited liability partnership is a member and controls the composition of the board of directors or of which the limited liability partnership holds more than half in nominal value of the equity share capital, or of any director or employee of such a company; and shall report upon the affairs of the partner, company, director or employee so far as they think that the results of their investigation of that person's affairs are relevant to the investigation of the affairs of the limited liability partnership.

(3) The Committee may appoint one or more inspectors to carry out an investigation and report to it for the purposes of paragraph (2).

(4) If it appears to the Court in the course of an insolvent winding up that any person has been guilty as mentioned in paragraph (1), and that no report with respect to the matter has been made by the insolvency manager to the Attorney General under that paragraph, the Court may (on the application of a person interested in the insolvent winding up or of its own motion) direct the insolvency manager to make such a report; and on a report being made accordingly this Article shall have effect as though the report had been made in pursuance of paragraph (1).

ARTICLE 31N

Obligations and powers arising under Article 31M

(1) If the Committee or an inspector appointed by it to carry out an investigation considers that any person is or may be in possession of information relating to a matter which they believe to be relevant to an investigation pursuant to paragraph (2) of Article 31M, the Committee or inspector may require him–

- (a) to produce and make available to them all records in his custody or power relating to that matter;
- (b) at reasonable times and on reasonable notice, to attend before them; and
- (c) otherwise to give them all assistance in connexion with the investigation which he is reasonably able to give,

and it is that person's duty to comply with the requirement.

(2) The Committee or an inspector appointed by it to carry out an investigation may, for the purposes of the examination, examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.

(3) An answer given by a person to a question put to him in exercise of the powers conferred by paragraph (1) may not be used by the prosecution in evidence against him in any criminal proceedings except for the purposes of proceedings under paragraph (7) or Article 31Q.

(4) Where the Committee or an inspector appointed by it to carry out an investigation has reasonable grounds for believing that any partner or former partner in or director or past director of the person whose affairs are being investigated maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the Island or elsewhere, into or out of which there has been paid money which has

been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that partner or former partner or director or past director towards the person or its remaining partners or its members, as the case may be, the Committee or the inspector may require the partner or former partner or director or past director to produce and make available to the Committee or inspector, as the case may be, all records in his possession or under his control relating to that bank account.

(5) Where criminal proceedings are instituted by the Attorney General following a report or reference under Article 31M the insolvency manager and every partner, agent and employee of the limited liability partnership past and present (other than the defendant) shall give the Attorney General any assistance in connexion with the prosecution which he is reasonably able to give; and for the purpose “agent” includes a banker, advocate or solicitor of the limited liability partnership and a person employed by the limited liability partnership as auditor.

(6) If a person fails or neglects to give assistance as required by paragraph (5), the Court may, on the application of the Attorney General, direct the person to comply with that paragraph; and if the application is made with respect to an insolvency manager, the Court may (unless it appears that the failure or neglect to comply was due to the insolvency manager not having in his hands sufficient assets of the limited liability partnership to enable him to do so) direct that the costs shall be borne by the insolvency manager personally.

(7) A person who knowingly or recklessly makes to the Committee or an inspector appointed by it any statement, whether written or oral, which conveys, or purports to convey, any information or explanation which the Committee or inspector requires, or is entitled to require, in the course of an investigation and is misleading, false or deceptive in a material particular, is guilty of an offence and liable to a fine or to imprisonment for a term not exceeding two years, or to both.

ARTICLE 31P

Authority for search

(1) An inspector appointed under paragraph (3) of Article 31M may for the purpose of the investigation apply to the Bailiff for a warrant under this Article in relation to specified premises.

(2) If the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled he may issue a warrant authorizing a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions referred to in paragraph (2) are –

- (a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
- (b) that the investigation for the purposes of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

(4) Where a person has entered premises in the execution of a warrant issued under this Article, he may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(5) In this Article, “premises” includes any place and, in particular, includes –

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure.

(6) Any person who wilfully obstructs any person acting in the execution of a warrant issued under this Article is guilty of an offence and liable to a fine or up to two years’ imprisonment or both.

ARTICLE 31Q

Failure to co-operate with Committee or inspector

- (1) If any person –
 - (a) fails to comply with a requirement under Article 31N; or
 - (b) refuses to answer any question put to him by the inspectors for the purpose of the investigation,

the Committee or the inspector may certify the refusal in writing to the Court.

(2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if he had been guilty of contempt of the Court.

ARTICLE 31R

Inspector's report to be evidence

(1) A copy of a report of an inspector certified by the Committee to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspector in relation to a matter contained in the report.

(2) A document purporting to be a certificate mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

ARTICLE 31S

Privileged information

Nothing in this Part requires the disclosure or production to the Committee or to an inspector appointed by it –

- (a) by a person of information or records which he would in an action in the court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the court except, if he is a lawyer, the name and address of his client;
- (b) by a limited liability partnership's bankers (as such) of information or records relating to the affairs of any of their customers other than the limited liability partnership or other person under investigation.

ARTICLE 31T

Enforcement of duty of partner or insolvency manager to make returns etc.

(1) If, in an insolvent winding up, a partner or the insolvency manager who has defaulted in delivering a document or in giving any notice which he is by law required to deliver or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court has the following powers.

(2) On an application made by a creditor or by the registrar, the Court may make an order directing the partner or the insolvency manager to make good the default within the time specified in the order.

(3) The Court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the partner or the insolvency manager personally.

(4) Nothing in paragraph (1) prejudices the operation of any enactment imposing penalties on a partner or an insolvency manager in respect of a default mentioned therein.

ARTICLE 31U

Qualifications of insolvency manager

- (1) A person who is not an individual is not qualified to act as an insolvency manager.
- (2) A person is not qualified to be appointed as an insolvency manager unless he is a member of –

- (a) the Institute of Chartered Accountants in England and Wales; or
- (b) the Institute of Chartered Accountants of Scotland; or
- (c) the Association of Chartered Certified Accountants; or
- (d) the Institute of Chartered Accountants in Ireland.

(3) None of the following persons is so qualified –

- (a) a partner in or employee of the limited liability partnership;
- (b) any partner in a partnership which is itself a partner in the limited liability partnership;
- (c) any officer or employee of a company which is a partner in the limited liability partnership; or
- (d) where a partner in the limited liability partnership is also a partner in another partnership, any partner in that partnership.

(4) Notwithstanding paragraph (1), the Viscount, by virtue of his office, is a person qualified for appointment as an insolvency manager.

(5) The Committee may by Order –

- (a) amend paragraph (2) by adding, deleting or substituting bodies therein;
- (b) amend paragraph (3) by adding, deleting, substituting or qualifying descriptions of persons therein.

ARTICLE 31V

Corrupt inducement affecting appointment as insolvency manager

A person who gives or agrees or offers to give a partner in or creditor of an insolvent limited liability partnership any valuable benefit with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the insolvency manager, is guilty of an offence and liable to a fine or up to two years' imprisonment or both.

ARTICLE 31W

Notification by insolvency manager of resignation etc.

(1) An insolvency manager 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 him, to the registrar and to the creditors.

(2) If default is made in compliance with paragraph (1), the insolvency manager is guilty of an offence and liable to a fine.

ARTICLE 31X

Notification of winding up of insolvent limited liability partnership

(1) When an insolvent limited liability partnership is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the limited liability partnership or the insolvency manager, being a document on or in which the name of the limited liability partnership appears, shall contain a statement that the limited liability partnership is subject to an insolvent winding up.

(2) If the insolvency manager of an insolvent limited liability partnership fails to comply with paragraph (1), he shall be guilty of an offence and liable to a fine.

ARTICLE 31Y

Bar against other proceedings in bankruptcy

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

ARTICLE 31Z

Disposal of records

(1) When an insolvent limited liability partnership has been wound up, and registration is about to be cancelled, its records and those of the insolvency manager may be disposed of in the way that the insolvency committee or, if there is no such committee, the creditors of the limited liability partnership, may direct.

(2) After 10 years from the cancellation of registration of the limited liability partnership, no responsibility rests on the limited liability partnership, the insolvency manager, or subject to Article 39, 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 Committee may direct that for such period as it thinks proper (but not exceeding 10 years from the cancellation of registration of the limited liability partnership), the records of the insolvent limited liability partnership which has been wound up shall not be destroyed.

(4) If a person acts in contravention of a direction made for the purposes of this Article he is guilty of an offence and liable to a fine not exceeding level 4 on the standard scale”.

SECOND SCHEDULE

(Regulation 3)

PART V OF THE PRINCIPAL LAW AS MODIFIED IN ITS APPLICATION TO INSOLVENT LIMITED LIABILITY PARTNERSHIPS

PART V

DISSOLUTION AND WINDING UP, ETC.

[ARTICLE 20A

Interpretation of Part V

In this Part –

“insolvency manager” means, in relation to an insolvent limited liability partnership, the person for the time being appointed under Article 25C, 25E or 25F to be responsible for its insolvent winding up;

“insolvency committee” means, in relation to an insolvent limited liability partnership, the committee appointed under Article 25D.]

ARTICLE 20

Dissolution upon a change in the partners in a partnership

Subject to Article 21, a limited liability partnership shall not be dissolved by any change in the persons who are partners in it if the partnership agreement so provides.

ARTICLE 21

Dissolution upon partnership ceasing to have two or more partners

(1) Notwithstanding any provision, express or implied, of the partnership agreement to the contrary, a limited liability partnership shall be dissolved immediately upon there ceasing to be two or more partners in the partnership.

(2) Where the person responsible for winding up the affairs of the limited liability partnership is the person who, at the time of dissolution, was the last remaining partner he shall, within 28 days after the dissolution, deliver a statement of dissolution signed by him to the registrar.

(3) Where the person responsible for winding up the affairs of the limited liability partnership is not the person described in paragraph (2), he shall, within 28 days after the day on which he becomes the person so responsible, deliver statement of dissolution signed by him to the registrar.

(4) Upon delivery to him of a statement under paragraph (2) or (3), the registrar shall register the statement and issue a certificate of dissolution.

(5) If default is made in compliance with paragraph (2), the person described in that paragraph is guilty of an offence.

(6) If default is made in compliance with paragraph (3), the person described in that paragraph is guilty of an offence.

ARTICLE 22

Dissolution by act of partner or other occurrence

(1) Where a limited liability partnership is dissolved by any act of a partner or by any other occurrence, other than the occurrence described in paragraph (1) of Article 21, the designated partner shall, within 28 days after the dissolution deliver to the registrar a statement of dissolution signed by him.

(2) Upon delivery to him of a statement under paragraph (1), the registrar shall register the statement and issue a

certificate of dissolution.

- (3) If default is made in compliance with paragraph (1), the designated partner is guilty of an offence.

ARTICLE 23

Power of Court to order dissolution

(1) The Court may, on the application of any partner in a limited liability partnership, order the dissolution of the partnership in any of the following cases –

- (a) when a partner, other than the partner making the application, becomes in any way permanently incapable of performing his part of the partnership contract;
- (b) when a partner, other than the partner making the application, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;
- (c) when a partner, other than the partner making the application, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (d) when the business of the partnership can only be carried on at a loss; or
- (e) whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

(2) Where the Court orders the dissolution of a limited liability partnership, the partner making the application shall deliver a copy of the order to the registrar within 28 days after it is made.

- (3) Failure to comply with paragraph (2) is an offence.

ARTICLE 24

Continuation of partnership following dissolution

* * * * *

ARTICLE 25

Winding up

(1) [~~Subject to paragraph (2) of this Article and to paragraph (4) of Article 25C]~~

- (a) in the event of the dissolution of a limited liability partnership in the circumstances described in paragraph (1) of Article 21, its affairs shall be wound up by the person who, at the time of dissolution, was the last remaining partner or, if he is deceased, his personal representatives; and
- (b) in the event of the dissolution of a limited liability partnership in any other circumstances, its affairs shall be wound up by a person appointed by the partners for the purpose or, if none, the designated partner, or if more than one, all of the designated partners.

(2) [~~Subject to paragraph (2A),]~~ the Court may appoint a person to wind up the affairs of a limited liability partnership upon the application of –

- (a) a partner in the partnership;
- (b) * * * * *
- (c) where the partnership is dissolved by the death of a partner, the personal representatives of that deceased partner.

[(2A) No appointment may be made pursuant to paragraph (2) in respect of an insolvent limited liability partnership after an insolvency manager is first appointed for it.]

(3) [Subject to paragraph (3A),] after the dissolution of a limited liability partnership, paragraphs (2) to (4) of Article 15 shall only continue to apply so far as may be necessary or desirable to achieve a beneficial winding up of its affairs or to such lesser extent as the partnership agreement may provide.

[(3A) Where the limited liability partnership is insolvent on dissolution or becomes insolvent following dissolution, notwithstanding that a partner continues to be an agent of the partnership, his ability to bind the partnership shall cease.]

(4) [Subject to paragraph (6A),] upon the dissolution of a limited liability partnership in the circumstances described in paragraph (1) of Article 21, or upon the limited liability partnership ceasing to have two or more partners at any time during the winding up of its affairs following its dissolution in any other circumstances –

- (a) the limited liability partnership shall cease to be a legal person;
- (b) the limited liability partnership property vested in the limited liability partnership and the beneficial interest of the limited liability partnership in any limited liability partnership property held by any person on its behalf, shall vest in the person responsible for winding up the affairs of the limited liability partnership;
- (c) any proceedings which might have been continued or commenced against the limited liability partnership may be continued or commenced against the person responsible for winding up the affairs of the limited liability partnership in his capacity as such;
- (d) any judgment obtained against the limited liability partnership prior to its ceasing to have two or more partners and any judgment obtained against the person responsible for winding up the affairs of the partnership in his capacity as such in any proceedings continued or commenced in accordance with sub-paragraph (c) shall only be enforceable against the limited liability partnership property.

(5) [Subject to paragraph (6A),] where the name of a limited liability partnership is inscribed in the Public Registry of Contracts as the holder of or having an interest in immovable property, the person responsible for winding up the affairs of the limited liability partnership, in whom that property or interest vests by virtue of sub-paragraph (b) of paragraph (4) shall deliver to the Judicial Greffier notice of the name of the person responsible for winding up the affairs of the limited liability partnership, in whom the property has vested, within 28 days after the property so vests.

(6) [Subject to paragraph (6A),] if default is made in compliance with paragraph (5) the person responsible for winding up the affairs of the limited liability partnership is guilty of an offence.

[(6A) Where an insolvent limited liability partnership ceases to have two or more partners at any time following its dissolution and following the appointment of an insolvency manager for it, paragraphs (4), (5) and (6) shall apply as if any reference in them to the person responsible for winding up the affairs of the limited liability partnership was a reference to the insolvency manager.]

[ARTICLE 25A

Partnership insolvent upon or following dissolution

(1) Where a limited liability partnership is insolvent upon dissolution or becomes insolvent following dissolution, the person responsible for winding up its affairs –

- (a) shall swear an affidavit recording his opinion that the partnership is insolvent and deliver a copy of the affidavit to the registrar –
 - (i) where the limited liability partnership is insolvent upon dissolution, within seven days of the dissolution, or
 - (ii) where the limited liability partnership becomes insolvent following dissolution, within seven days of the insolvency;

and

(b) shall –

- (i) by not less than 14 days' notice given by post, call a meeting of the creditors of the limited liability partnership, to be held within the Island within 28 days after that affidavit is sworn and, in the notice nominate an insolvency manager,
- (ii) when that notice is given to the creditors, deliver a copy of it to the registrar,
- (iii) not less than 10 days before the day for which the meeting is called, give notice of the meeting by advertisement in the Jersey Gazette,
- (iv) during the period before the creditors' meeting is held, furnish any creditor free of charge with such information concerning the affairs of the limited liability partnership as he may reasonably request, and
- (v) make out a statement as to the affairs of the limited liability partnership, verified by affidavit, and lay that statement before the creditors' meeting.

(2) If the person responsible for winding up the affairs of the limited liability partnership is qualified for appointment as its insolvency manager, he may nominate himself under clause (i) of sub-paragraph (b) of paragraph (1).

(3) The person responsible for winding up the affairs of the limited liability partnership shall preside at the creditors' meeting.

(4) The insolvent winding up of a limited liability partnership commences –

- (a) where the partnership is insolvent upon dissolution, on the day of dissolution; and
- (b) where the partnership becomes insolvent following dissolution, on the day on which the creditors' meeting is held.

(5) If default is made in compliance with this Article, the person responsible for winding up the affairs of the limited liability partnership is guilty of an offence and liable to a fine.

ARTICLE 25B

Procedure and quorum at creditors' meeting

(1) Subject to paragraphs (2), (3) and (4), every creditor who has been given notice of a creditors' meeting shall be entitled to vote at the meeting or any adjournment of it.

(2) Votes shall be calculated according to the amount of the creditor's debt on the day the insolvent winding up commences.

(3) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the person responsible for winding up the affairs of the limited liability partnership agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote.

(4) For any resolution to pass at the creditors' meeting there must be a majority in excess of one half in value of the creditors present in person or by proxy and voting on the resolution.

(5) A creditors' meeting shall not be competent to act unless there are present in person or by proxy at least three creditors, or all of the creditors, if their number does not exceed three, being in either case entitled to vote.

ARTICLE 25C

Appointment of insolvency manager

(1) The creditors at a creditors' meeting may nominate an insolvency manager.

(2) The person nominated by the creditors to be insolvency manager or, if none, the person nominated by the person responsible for winding up the affairs of the limited liability partnership, is appointed with effect from the conclusion of the creditors' meeting.

(3) In the case of different persons being nominated, a creditor or partner of the limited liability partnership or the person responsible for winding up its affairs may, within seven days after the day on which the nomination was made by the creditors, apply to the Court for an order either –

(a) directing that the person nominated by the person responsible for winding up the affairs of the limited liability partnership shall be the insolvency manager instead of or jointly with the person nominated by the creditors; or

(b) appointing some other person to be the insolvency manager.

(4) Upon the appointment of the insolvency manager –

(a) all the powers and duties of the person responsible for winding up the affairs of the limited liability partnership shall cease;

(b) any limited liability partnership property and any beneficial interest of the limited liability partnership in any limited liability partnership property vested in the person responsible for winding up the affairs of the limited liability partnership pursuant to sub-paragraph (b) of paragraph (4) of Article 25 shall vest in the insolvency manager;

(c) any proceedings which might have been continued or commenced against the person responsible for winding up the affairs of the limited liability partnership pursuant to sub-paragraph (c) of paragraph (4) of Article 2 shall be continued or commenced against the insolvency manager in his capacity as such; and

(d) any amount paid to the person responsible for winding up the affairs of the limited liability partnership pursuant to paragraph (2) or (5) of Article 6 shall be paid to the insolvency manager.

(5) Where the name of the person responsible for winding up the affairs of the limited liability partnership is inscribed in the Public Registry of Contracts as the holder of or having an interest in immovable property which vests in the insolvency manager by virtue of sub-paragraph (b) of paragraph (4), the insolvency manager shall deliver to the Judicial Greffier notice of the name of the insolvency manager, in whom the property has vested, within 28 days after the property so vests.

(6) Any judgment obtained against the insolvency manager in his capacity as such in any proceedings continued or commenced in accordance with sub-paragraph (c) of paragraph (4) shall only be enforceable against the limited liability partnership property.

(7) The insolvency manager shall, within 14 days of his appointment, deliver notice thereof to the registrar and to the creditors.

(8) If default is made in compliance with paragraph (5) or (7), the insolvency manager is guilty of an offence and liable to a fine not exceeding level 4 on the standard scale and, in the case of a continuing offence, to a further fine not exceeding level 2 on the standard scale for each day on which the offence so continues.

ARTICLE 25D

Appointment of insolvency committee

(1) A creditors' meeting may appoint an insolvency committee consisting of not more than five persons to exercise the functions conferred on it by this Part.

(2) If a committee is appointed, the partners of the limited liability partnership may appoint such number of persons not exceeding five as they think fit to act as members of the committee.

(3) The creditors may resolve that all or any of the persons so appointed by the partners 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 Court otherwise directs, qualified to act as members of the committee; and
- (b) on an application to the Court under this provision, the Court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

ARTICLE 25E

Remuneration of and vacancy in office of insolvency manager

- (1) An insolvency manager is entitled to receive such remuneration as is agreed between him and the insolvency committee or, if there is no committee, between him and the creditors or, failing any such agreement, as is fixed by the Court.
- (2) The creditors may at any time remove the insolvency manager (other than such a person appointed by the Court).
- (3) If a vacancy occurs, by death, resignation or otherwise, in the office of the insolvency manager (other than such a person appointed by the Court) the creditors may appoint another insolvency manager.
- (4) Where a vacancy in the office of insolvency manager is filled, either by appointment of the creditors or of the Court, paragraphs (4), (5), (6), (7) and (8) of Article 25C shall apply for the purposes of notification of the appointment to the registrar and the vesting of such property in, the continuation and commencement of such proceedings against and the payment of any amount to the new insolvency manager as was formerly vested in or might have been continued or commenced against or paid to the previous insolvency manager in his capacity as such, as if any reference in them to the person responsible for winding up the affairs of the limited liability partnership were a reference to the previous insolvency manager and any reference to the insolvency manager were a reference to the new insolvency manager.

ARTICLE 25F

Appointment or removal by the Court of insolvency manager

- (1) If for any reason there is, in an insolvent winding up, no insolvency manager, the Court may appoint such a person.
- (2) The Court may, on reason being given, remove an insolvency manager and appoint another.

ARTICLE 25G

No insolvency manager appointed

- (1) This Article applies where an insolvent winding up has commenced but no insolvency manager has been appointed.
- (2) During the period before the appointment of an insolvency manager, the powers of the person responsible for winding up the affairs of the limited liability partnership shall not be exercised except –
 - (a) with the sanction of the Court;
 - (b) to secure compliance with Article 25A; or
 - (c) to protect the limited liability partnership property.
- (3) If the person responsible for winding up the affairs of the limited liability partnership contravenes paragraph (2) he shall be guilty of an offence and liable to a fine or up to six months' imprisonment or both.]

[ARTICLE 26

Reference of questions and powers to the Court

- (1) The insolvency manager, a partner in the partnership or a creditor of the partnership may apply to the Court for the Court to determine a question arising in an insolvent winding up, or exercise all or any of the powers which the Court or the Viscount might exercise if a declaration had been made in relation to the limited liability partnership under the

Bankruptcy (Désastre) (Jersey) Law 1990.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) An Act of the Court recording the making of an order under this Article staying the proceedings in the winding up shall, within 14 days after the making of the order, be delivered by the insolvency manager, or otherwise as may be ordered by the Court, to the registrar, who shall register it.

(4) If default is made in compliance with paragraph (3), the insolvency manager or other person ordered by the Court to deliver the Act is guilty of an offence and liable to a fine not exceeding level 4 on the standard scale and, in the case of a continuing offence, to a further fine not exceeding level 2 on the standard scale for each day on which the offence so continues.]

ARTICLE 27

Application of financial provision

(1) Notwithstanding Article 28 or any other enactment or law to the contrary, [the insolvency manager or, in the case of an insolvent limited liability partnership declared ‘en désastre’ under the Bankruptcy (Désastre) (Jersey) Law 1990, the Viscount] shall apply any payment made pursuant to paragraph (2) or (5) of Article 6 in the payment of creditors to whom the limited liability partnership is liable by virtue of paragraph (1) of Article 4, excluding any partner or former partner in the limited liability partnership in respect of his partnership interest or in respect of any loan made by him to the partnership for any purpose.

(2) A failure to comply with paragraph (1) shall be actionable at the suit of a creditor of the limited liability partnership who suffers loss as a result of the failure, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) Any money remaining after payment of the creditors described in paragraph (1) shall be distributed in accordance with [paragraphs (1) and (2) of Article 27A and] Article 28.

[ARTICLE 27A

Application of the law relating to “désastre”

(1) Subject to paragraph (2), in an insolvent 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 proof of debts, to the setting off of debts and, subject to the provision in paragraph (1) of Article 28 for the subordination of liabilities to partners and former partners to liabilities to other creditors, to the order of payment of 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 insolvency manager and to the commencement of the insolvent winding up respectively for references to the Viscount and to the date of the declaration.

(2) Any surplus remaining after payment of the debts proved in the insolvent winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the insolvent winding up in respect of the period during which they have been outstanding since the commencement of the insolvent winding up and at the rate of interest applicable apart from the winding up.

(3) Paragraphs (1) and (2) shall apply for the purposes of the application of the financial provision pursuant to paragraph (1) of Article 27 as they apply for the purposes of an insolvent winding up, save that—

- (a) no payment shall be made out of the financial provision of any remuneration payable to the insolvency manager or Viscount or any expenses incurred in the insolvent winding up or “désastre”; and
- (b) no priority shall be given in the application of the financial provision to the debts described in sub-paragraphs (b) and (c) of paragraph (1) of Article 32 of the Bankruptcy (Désastre) (Jersey) Law 1990.

(4) Where paragraphs (1) and (2) apply by virtue of paragraph (3) in the case of an insolvent limited liability partnership in respect of which a “désastre” is declared under the Bankruptcy (Désastre) (Jersey) Law 1990 –

- (a) the substitution of references made by paragraph (1) shall not apply; and
- (b) the references in paragraph (2) to the insolvent winding up and the commencement of the insolvent winding up shall be construed respectively as references to the “désastre” and the date of the declaration of the “désastre”.

ARTICLE 27B

Arrangement when binding on creditors

(1) An arrangement entered into between a limited liability partnership immediately preceding the commencement of an insolvent winding up and its creditors is (subject to the right of appeal under paragraph (2)) binding –

- (a) on the limited liability partnership; and
- (b) on the creditors, if acceded to by three-quarters in number and value of them.

(2) A creditor may, within three weeks from the completion of the arrangement, appeal to the Court against it; and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.]

ARTICLE 28

Settling accounts on winding up

(1) Where accounts are settled in the course of the winding up of the affairs of a limited liability partnership, the liabilities of the partnership shall be paid in the following order of priority –

- (a) [subject to the provisions of any enactment as to preferential payments,] liabilities to creditors, excluding any partner or former partner in the limited liability partnership in respect of his partnership interest or in respect of any loan made by him to the partnership for any purpose; then
- (b) subject to the partnership agreement and to any agreement between the partnership and the former partner in question –
 - (i) liabilities to former partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
 - (ii) liabilities to former partners in the limited liability partnership in respect of their partnership interests or otherwise; then
- (c) subject to the partnership agreement –
 - (i) liabilities to partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
 - (ii) liabilities to partners in the limited liability partnership in respect of their partnership interests or otherwise.

(2) Subject to the partnership agreement, any limited liability partnership property remaining after payment of the liabilities described in paragraph (1) shall be distributed equally to the partners.

[(3) All costs, charges and expenses properly incurred in the winding up of an insolvent limited liability partnership, including the remuneration of the insolvency manager, are payable out of the limited liability partnership property in accordance with paragraph (1) of Article 27A and paragraph (1) of this Article.]

[ARTICLE 28A

Meetings of insolvent limited liability partnership and creditors

(1) If an insolvent winding up continues for more than twelve months, the insolvency manager shall call a meeting of the partners in the limited liability partnership and a meeting of the creditors, to be held on the first convenient

date within three months after the end of the first twelve months from the commencement of the insolvent winding up, and of each succeeding twelve months or such longer period as the Committee may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding twelve months.

(2) If default is made in compliance with paragraph (1), the insolvency manager is guilty of an offence and liable to a fine not exceeding level 2 on the standard scale.

ARTICLE 28B

Insolvency manager's report on completion of winding up

(1) As soon as the affairs of an insolvent limited liability partnership are fully wound up, the insolvency manager shall make up an account of the winding up, showing how it has been conducted and how any payment made pursuant to paragraph (2) or (5) of Article 6 and the limited liability partnership property have been disposed of, and thereupon shall call a meeting of the partners in the limited liability partnership and a meeting of its creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by not less than 21 days' notice sent by post, accompanied by a copy of the insolvency manager's account.

ARTICLE 28C

Viscount's report in respect of insolvent limited liability partnership "en désastre"

When, in the case of an insolvent limited liability partnership declared "en désastre" under the Bankruptcy (Désastre) (Jersey) Law 1990, the Viscount supplies the creditors and the Judicial Greffier with a report and accounts relating to the "désastre" under sub-paragraph (a) of paragraph (1) of Article 36 of that Law, he shall also supply an account of how any payment made pursuant to paragraph (2) or (5) of Article 6 of this Law has been disposed of.]

ARTICLE 29

Completion of winding up

[(1) Within seven days after the date of the meetings described in Article 28B (or, if they are not held on the same day, after the date of the later one) the insolvency manager shall deliver to the registrar –

- (a) subject to paragraphs (1A) and (1B), a statement signed by him of the holding of the meetings and their dates; and
- (b) a copy of his account.

(1A) If a quorum is not present at the creditors' meeting, the insolvency manager shall, in lieu of the statement required by sub-paragraph (a) of paragraph (1), deliver a statement that the meeting was duly called and that no quorum was present.

(1B) If all the partners, or so many of the partners as the partnership agreement requires, are not present at the partners' meeting, the insolvency manager shall, in lieu of the statement required by sub-paragraph (a) of paragraph (1), deliver a statement that the meeting was duly called but not held.]

(2) If default is made in compliance with paragraph (1), [the insolvency manager] is guilty of an offence.

ARTICLE 30

Effect of declaration that a partnership is "en désastre"

(1) For the purposes of Articles 6 and 27, the making of a declaration in respect of a limited liability partnership shall be deemed to be an order for its dissolution and the winding up of its affairs.

[(1A) For the purposes of paragraphs (1) and (2) of Article 28, an insolvent limited liability partnership in respect of which there is a "désastre" shall be deemed to be subject to a winding up of its affairs.]

(2) Where an order recalling a declaration is made in respect of a limited liability partnership, Article 6 shall apply to the partnership, with effect from the issue of a certificate under paragraph (4) in respect of the order, as if the

declaration had not been deemed to be an order for its dissolution and the winding up of its affairs.

(3) Where a declaration, or an order recalling a declaration, is made in respect of a limited liability partnership, the designated partner shall deliver a copy of the declaration or order to the registrar within 28 days of its being made.

(4) Upon delivery to him of a copy of a declaration or of an order recalling a declaration, the registrar shall register it and issue a certificate to that effect.

(5) If default is made in compliance with paragraph (3), the designated partner is guilty of an offence.

(6) In this Article –

“declaration” shall have the same meaning as in the Bankruptcy (Désastre) (Jersey) Law 1990; and

“order recalling a declaration” shall be construed in accordance with Article 7 of that Law.

[ARTICLE 31

Cancellation of registration following insolvent winding up etc.

(1) Upon receipt of –

(a) a statement delivered to him under Article 29; or

(b) notification under paragraph (3) of Article 36 of the Bankruptcy (Désastre) (Jersey) Law 1990,

in respect of an insolvent limited liability partnership, the registrar shall forthwith register the statement or notification.

(2) Subject to paragraph (3), at the end of three months from the registration of the statement or notification, the registrar shall cancel the entry in the register relating to the limited liability partnership and issue a certificate of cancellation to the insolvency manager or Viscount as the case may require.

(3) The Court may, on the application of the insolvency manager or Viscount, as the case may require, or of another person who appears to the Court to be interested, make an order deferring the date on which a certificate of cancellation of registration is issued to such date as the Court thinks fit.

(4) The person on whose application an order of the Court under paragraph (3) is made shall, within 14 days after the making of the order, deliver to the registrar the relevant Act of the Court for registration.

(5) If default is made in compliance with paragraph (4), the person on whose application the order is made shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale and, in the case of a continuing offence, to a further fine not exceeding level 2 on the standard scale for each day on which the offence so continues.

(6) A certificate issued under paragraph (2) is conclusive evidence as to the cancellation of the registration of the limited liability partnership.]

[ARTICLE 31A

Powers and duties of insolvency manager

(1) An insolvency manager may, with the sanction of the Court or the insolvency 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 limited liability partnership.

(2) An insolvency manager may, without sanction, do anything, other than an act within paragraph (1), that may be required for the beneficial winding up of the limited liability partnership.

(3) An insolvency manager may summon a meeting of the partners of the limited liability partnership for the

purpose of obtaining their sanction for any other purpose he may think fit.

(4) The insolvency manager shall pay the debts of the limited liability partnership in accordance with this Part.

(5) The appointment or nomination of more than one insolvency manager 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.

ARTICLE 31B

Power to disclaim onerous property

(1) Subject to this Article, the insolvency manager may, within six months after the commencement of the insolvent winding up, by the giving of notice signed by him and referring to this Article and Article 31C to each person who is interested in or under any liability in respect of the property disclaimed, disclaim any onerous moveable property, or any onerous immovable property situated outside the Island, and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) For the purposes of this Article –

(a) onerous moveable property is any –

(i) unprofitable contract, and

(ii) other moveable property of the limited liability partnership which 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;

(b) onerous immovable property is any immovable property of the limited liability partnership situated outside the Island and having the characteristics mentioned in clause (ii) of sub-paragraph (a).

(3) A disclaimer under this Article –

(a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the limited liability partnership in or in respect of the property disclaimed; but

(b) shall not, except so far as is necessary for the purpose of releasing the limited liability partnership from liability, affect the rights or liabilities of any other person.

(4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Article shall be deemed to be a creditor of the limited liability partnership to the extent of the loss or damage in the winding up.

ARTICLE 31C

Power of Court in respect of disclaimed property

(1) This Article applies where the insolvency manager has disclaimed property under Article 31B.

(2) An application may be made to the Court under this Article by –

(a) a person who claims an interest in the disclaimed property; or

(b) a person who is under a liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(3) Subject to paragraph (4), the Court may, on an application under this Article, 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 sub-paragraph (b) of paragraph (2) or a trustee for such a person.

(4) The Court shall not make an order by virtue of sub-paragraph (b) of paragraph (3) 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.

(5) The effect of an order under this Article shall be taken into account in assessing for the purpose of paragraph (4) of Article 31B the extent of loss or damage sustained by a person in consequence of the disclaimer.

ARTICLE 31D

Unenforceability of liens on records

(1) Subject to paragraph (2), in an insolvent winding up, a lien or other right to retain possession of any records of a limited liability partnership shall be unenforceable to the extent that its enforcement would deny possession of those records to the insolvency manager.

(2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

ARTICLE 31E

Transactions at an undervalue and preferences

(1) Subject to this Article, where an insolvent limited liability partnership has at a relevant time –

- (a) entered into a transaction with any person at an undervalue; or
- (b) given a preference to any person,

the insolvency manager may apply to the Court for such order as the Court thinks fit for restoring the position to what it would have been if the limited liability partnership had not entered into that transaction or given that preference, as the case may be.

(2) For the purposes of this Article, a limited liability partnership enters into a transaction with a person at an undervalue if the limited liability partnership –

- (a) makes a gift to that person or otherwise enters into a transaction with that person on terms for which there is no ‘cause’; or
- (b) enters into a transaction with that person for a ‘cause’ the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the ‘cause’ provided by the limited liability partnership.

(3) For the purposes of this Article, a limited liability partnership gives a preference to a person if –

- (a) that person is one of the creditors of the limited liability partnership or a surety or guarantor for any of the debts or other liabilities of the limited liability partnership; and
- (b) the limited liability partnership –
 - (i) does anything, or
 - (ii) suffers anything to be done,

which has the effect of putting that person into a position which, in the event of the insolvent winding up of the limited liability partnership, will be better than the position he would have been in if that thing had not been done.

(4) The Court shall not make an order under this Article in respect of a preference given to any person unless the limited liability partnership which gave it was influenced in deciding to give it by a desire to produce in relation to that person the effect referred to in sub-paragraph (b) of paragraph (3).

(5) Subject to paragraph (6), the time at which a limited liability partnership enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given –

- (a) in the case of a transaction at an undervalue, at a time in the period of five years ending with the date of commencement of the insolvent winding up;
- (b) in the case of a preference which is not a transaction at an undervalue, at a time in the period of one year ending with that date.

(6) Subject to paragraph (7), where a limited liability partnership enters into a transaction at an undervalue or gives a preference at a time mentioned in sub-paragraph (a) or (b) of paragraph (5), that time is not a relevant time unless the limited liability partnership –

- (a) is at that time unable to pay its debts as they fall due; or
- (b) becomes unable to pay its debts as they fall due in consequence of the transaction or preference.

(7) Paragraph (6) shall not apply to a transaction at an undervalue which takes place less than two years before the date of commencement of the insolvent winding up.

- (8) In this Article, ‘cause’ has the meaning assigned to it by the customary law of this Island.

ARTICLE 31F

Responsibility of persons for wrongful trading

(1) Notwithstanding Article 5 but subject to paragraph(4), if, in the course of an insolvent winding up, it appears that paragraph (2) applies in relation to a person who is or has been a partner of the limited liability partnership, the Court, or the application of the insolvency manager, may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the limited liability partnership arising after the time referred to in paragraph (2).

(2) This paragraph applies in relation to a person if –

- (a) at some time before the date of commencement of the insolvent winding up that person –

- (i) knew that there was no reasonable prospect that the limited liability partnership would avoid insolvency, or
 - (ii) on the facts known to him was reckless as to whether the limited liability partnership would avoid insolvency; and

- (b) that person was a partner in the limited liability partnership at that time.

(3) For the purposes of paragraph (2), a person shall not be treated as having had knowledge of any matter by reason only that another partner in the limited liability partnership had such knowledge.

(4) The Court shall not make an order under paragraph (1) with respect to any person if it is satisfied that after either condition specified in sub-paragraph (a) of paragraph (2) was first satisfied in relation to him that person took reasonable steps with a view to minimizing the potential loss to creditors of the limited liability partnership.

(5) On the hearing of an application under this Article, the insolvency manager may himself give evidence or call witnesses.

(6) For the purposes of the conditions specified in sub-paragraph (a) of paragraph (2) of this Article, a limited liability partnership is insolvent if, within the meaning of paragraph (5) of Article 5, it is unable to pay its debts and, for the purpose of determining whether a limited liability partnership is so unable to pay its debts, paragraph (6) of that Article shall also apply as if the reference in it to the person denying liability under paragraph (3) or (4) of that Article were a reference to the person denying responsibility under this Article.

ARTICLE 31G

Responsibility for fraudulent trading

(1) If, in the course of an insolvent winding up, it appears that any business of the limited liability partnership has been carried on with intent to defraud creditors of the limited liability partnership or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the insolvency manager, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the limited liability partnership property as the Court thinks proper.

(2) For the purposes of paragraph (1) a partner in a limited liability partnership shall not be treated as having been knowingly a party to the carrying on of the business in the manner described in that paragraph by reason only that another partner in the limited liability partnership was knowingly such a party.

(3) On the hearing of an application under this Article the insolvency manager may himself give evidence or call witnesses.

(4) Where the Court makes an order under this Article or Article 31F, it may give such further directions as it thinks proper for giving effect to the order.

(5) Where the Court makes an order under this Article or Article 31F in relation to a person who is a creditor of the limited liability partnership, it may direct that the whole or part of a debt owed by the limited liability partnership to that person and any interest thereon shall rank in priority after all other debts owed by the limited liability partnership and after any interest on those debts.

(6) This Article and Article 31F have 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.

ARTICLE 31H

Extortionate credit transactions

(1) This Article applies in an insolvent winding up where the limited liability partnership is, or has been, a party to a transaction for, or involving, the provision of credit to the limited liability partnership.

(2) The Court may, on the application of the insolvency manager, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of three years ending with the commencement of the insolvent winding up.

(3) For the purposes of this Article, 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,

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is, or as the case may be, was extortionate.

(4) An order under this Article with respect to a transaction may contain one or more of the following as the 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 insolvency manager sums paid to that person, by virtue of the transaction, by the limited liability partnership;
- (d) provision requiring a person to surrender to the insolvency manager property held by him as security for the purposes of the transaction;
- (e) provision directing accounts to be taken between any persons.

ARTICLE 31J

Application of provisions to insolvent limited liability partnership “en désastre”

Articles 31F, 31G and 31H shall apply to an insolvent limited liability partnership in respect of which a “désastre” is declared under the Bankruptcy (Désastre) (Jersey) Law 1990 as if –

- (a) any reference to an insolvent winding up was a reference to a “désastre”;
- (b) any reference to the insolvency manager was a reference to the Viscount; and
- (c) any reference to the commencement of an insolvent winding up was a reference to the date of the declaration under Article 6 of that Law.

ARTICLE 31K

Delivery and seizure of property

(1) Where a person has in his possession or control property or records to which a limited liability partnership appears in an insolvent winding up to be entitled, the Court may require that person forthwith (or within a period which the Court may direct) to pay, deliver, convey, surrender or transfer the property or records to the insolvency manager.

- (2) Where –
 - (a) the insolvency manager seizes or disposes of property which is not property of the limited liability partnership; and
 - (b) at the time of seizure or disposal the insolvency manager believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the insolvency manager shall not be liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the insolvency manager, and shall have a lien on the property, or the proceeds of its sale, for expenses incurred in connexion with the seizure or disposal.

ARTICLE 31L

Duty to co-operate with insolvency manager

- (1) In an insolvent winding up, each of the persons mentioned in paragraph (2) shall –
 - (a) give the insolvency manager information concerning the limited liability partnership and its establishment, business, dealings, affairs, or property which the insolvency manager may at any time after the commencement of the insolvent winding up reasonably require; and
 - (b) attend on the insolvency manager at reasonable times and on reasonable notice when requested to do so.
- (2) The persons referred to in paragraph (1) are –
 - (a) those who are, or have at any time been, partners in the limited liability partnership;
 - (b) those who are in the employment of the limited liability partnership, or have been in its employment within one year before the commencement of the insolvent winding up, and are in the opinion of the insolvency manager capable of giving information which he requires; and
 - (c) those who are, or have within that year been, partners in or in the employment of another partnership which is or was a partner in the limited liability partnership in question or officers of, or in the employment of any person who is or was a partner in the limited liability partnership in question.
- (3) For the purposes of paragraph (2), “employment” includes employment under a contract for services

(“*contrat de louage d’ouvrage*”).

(4) Default in compliance with any obligation imposed by this Article is an offence liable to a fine or up to six months’ imprisonment or to both.

ARTICLE 31M

Insolvency manager to report criminal offences

(1) If it appears to the insolvency manager that any person has been guilty of an offence in relation to the limited liability partnership for which that person is criminally liable, he shall –

- (a) forthwith report the matter to the Attorney General; and
- (b) furnish the Attorney General with information and give him access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession of or under the control of the insolvency manager and relating to the matter in question) as the Attorney General requires.

(2) Where a report is made to him under paragraph (1), the Attorney General may refer the matter to the Committee for further enquiry; and the Committee –

- (a) shall thereupon investigate the matter; and
- (b) may also, if they think it necessary for the purposes of their investigation, investigate the affairs of any partner in the limited liability partnership or of any company of which the limited liability partnership is a member and controls the composition of the board of directors or of which the limited liability partnership holds more than half in nominal value of the equity share capital, or of any director or employee of such a company; and shall report upon the affairs of the partner, company, director or employee so far as they think that the results of their investigation of that person’s affairs are relevant to the investigation of the affairs of the limited liability partnership.

(3) The Committee may appoint one or more inspectors to carry out an investigation and report to it for the purposes of paragraph (2).

(4) If it appears to the Court in the course of an insolvent winding up that any person has been guilty as mentioned in paragraph (1), and that no report with respect to the matter has been made by the insolvency manager to the Attorney General under that paragraph, the Court may (on the application of a person interested in the insolvent winding up or of its own motion) direct the insolvency manager to make such a report; and on a report being made accordingly this Article shall have effect as though the report had been made in pursuance of paragraph (1).

ARTICLE 31N

Obligations and powers arising under Article 31M

(1) If the Committee or an inspector appointed by it to carry out an investigation considers that any person is or may be in possession of information relating to a matter which they believe to be relevant to an investigation pursuant to paragraph (2) of Article 31M, the Committee or inspector may require him–

- (a) to produce and make available to them all records in his custody or power relating to that matter;
- (b) at reasonable times and on reasonable notice, to attend before them; and
- (c) otherwise to give them all assistance in connexion with the investigation which he is reasonably able to give,

and it is that person’s duty to comply with the requirement.

(2) The Committee or an inspector appointed by it to carry out an investigation may, for the purposes of the examination, examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.

(3) An answer given by a person to a question put to him in exercise of the powers conferred by paragraph (1) may not be used by the prosecution in evidence against him in any criminal proceedings except for the purposes of proceedings under paragraph (7) or Article 31Q.

(4) Where the Committee or an inspector appointed by it to carry out an investigation has reasonable grounds for believing that any partner or former partner in or director or past director of the person whose affairs are being investigated maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the Island or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that partner or former partner or director or past director towards the person or its remaining partners or its members, as the case may be, the Committee or the inspector may require the partner or former partner or director or past director to produce and make available to the Committee or inspector, as the case may be, all records in his possession or under his control relating to that bank account.

(5) Where criminal proceedings are instituted by the Attorney General following a report or reference under Article 31M the insolvency manager and every partner, agent and employee of the limited liability partnership past and present (other than the defendant) shall give the Attorney General any assistance in connexion with the prosecution which he is reasonably able to give; and for the purpose "agent" includes a banker, advocate or solicitor of the limited liability partnership and a person employed by the limited liability partnership as auditor.

(6) If a person fails or neglects to give assistance as required by paragraph (5), the Court may, on the application of the Attorney General, direct the person to comply with that paragraph; and if the application is made with respect to an insolvency manager, the Court may (unless it appears that the failure or neglect to comply was due to the insolvency manager not having in his hands sufficient assets of the limited liability partnership to enable him to do so) direct that the costs shall be borne by the insolvency manager personally.

(7) A person who knowingly or recklessly makes to the Committee or an inspector appointed by it any statement, whether written or oral, which conveys, or purports to convey, any information or explanation which the Committee or inspector requires, or is entitled to require, in the course of an investigation and is misleading, false or deceptive in a material particular, is guilty of an offence and liable to a fine or to imprisonment for a term not exceeding two years, or to both.

ARTICLE 31P

Authority for search

(1) An inspector appointed under paragraph (3) of Article 31M may for the purpose of the investigation apply to the Bailiff for a warrant under this Article in relation to specified premises.

(2) If the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled he may issue a warrant authorizing a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions referred to in paragraph (2) are –

(a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(b) that the investigation for the purposes of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

(4) Where a person has entered premises in the execution of a warrant issued under this Article, he may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(5) In this Article, "premises" includes any place and, in particular, includes –

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any offshore installation; and

(c) any tent or movable structure.

(6) Any person who wilfully obstructs any person acting in the execution of a warrant issued under this Article is

guilty of an offence and liable to a fine or up to two years' imprisonment or both.

ARTICLE 31Q

Failure to co-operate with Committee or inspector

- (1) If any person –
 - (a) fails to comply with a requirement under Article 31N; or
 - (b) refuses to answer any question put to him by the inspectors for the purpose of the investigation,

the Committee or the inspector may certify the refusal in writing to the Court.

(2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if he had been guilty of contempt of the Court.

ARTICLE 31R

Inspector's report to be evidence

(1) A copy of a report of an inspector certified by the Committee to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspector in relation to a matter contained in the report.

(2) A document purporting to be a certificate mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

ARTICLE 31S

Privileged information

Nothing in this Part requires the disclosure or production to the Committee or to an inspector appointed by it –

- (a) by a person of information or records which he would in an action in the court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the court except, if he is a lawyer, the name and address of his client;
- (b) by a limited liability partnership's bankers (as such) of information or records relating to the affairs of any of their customers other than the limited liability partnership or other person under investigation.

ARTICLE 31T

Enforcement of duty of partner or insolvency manager to make returns etc.

(1) If, in an insolvent winding up, a partner or the insolvency manager who has defaulted in delivering a document or in giving any notice which he is by law required to deliver or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court has the following powers.

(2) On an application made by a creditor or by the registrar, the Court may make an order directing the partner or the insolvency manager to make good the default within the time specified in the order.

(3) The Court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the partner or the insolvency manager personally.

(4) Nothing in paragraph (1) prejudices the operation of any enactment imposing penalties on a partner or an insolvency manager in respect of a default mentioned therein.

ARTICLE 31U

Qualifications of insolvency manager

- (1) A person who is not an individual is not qualified to act as an insolvency manager.
- (2) A person is not qualified to be appointed as an insolvency manager unless he is a member of –
 - (a) the Institute of Chartered Accountants in England and Wales; or
 - (b) the Institute of Chartered Accountants of Scotland; or
 - (c) the Association of Chartered Certified Accountants; or
 - (d) the Institute of Chartered Accountants in Ireland.
- (3) None of the following persons is so qualified –
 - (a) a partner in or employee of the limited liability partnership;
 - (b) any partner in a partnership which is itself a partner in the limited liability partnership;
 - (c) any officer or employee of a company which is a partner in the limited liability partnership; or
 - (d) where a partner in the limited liability partnership is also a partner in another partnership, any partner in that partnership.
- (4) Notwithstanding paragraph (1), the Viscount, by virtue of his office, is a person qualified for appointment as an insolvency manager.
- (5) The Committee may by Order –
 - (a) amend paragraph (2) by adding, deleting or substituting bodies therein;
 - (b) amend paragraph (3) by adding, deleting, substituting or qualifying descriptions of persons therein.

ARTICLE 31V

Corrupt inducement affecting appointment as insolvency manager

A person who gives or agrees or offers to give a partner in or creditor of an insolvent limited liability partnership any valuable benefit with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the insolvency manager, is guilty of an offence and liable to a fine or up to two years' imprisonment or both.

ARTICLE 31W

Notification by insolvency manager of resignation etc.

- (1) An insolvency manager 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 him, to the registrar and to the creditors.
- (2) If default is made in compliance with paragraph (1), the insolvency manager is guilty of an offence and liable to a fine.

ARTICLE 31X

Notification of winding up of insolvent limited liability partnership

- (1) When an insolvent limited liability partnership is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the limited liability partnership or the insolvency manager, being a document on or in which the name of the limited liability partnership appears, shall contain a statement that the limited liability partnership is subject to an insolvent winding up.
- (2) If the insolvency manager of an insolvent limited liability partnership fails to comply with paragraph (1) he

shall be guilty of an offence and liable to a fine.

ARTICLE 31Y

Bar against other proceedings in bankruptcy

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

ARTICLE 31Z

Disposal of records

(1) When an insolvent limited liability partnership has been wound up, and registration is about to be cancelled, its records and those of the insolvency manager may be disposed of in the way that the insolvency committee or, if there is no such committee, the creditors of the limited liability partnership, may direct.

(2) After 10 years from the cancellation of registration of the limited liability partnership, no responsibility rests on the limited liability partnership, the insolvency manager, or subject to Article 39, 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 Committee may direct that for such period as it thinks proper (but not exceeding 10 years from the cancellation of registration of the limited liability partnership), the records of the insolvent limited liability partnership which has been wound up shall not be destroyed.

(4) If a person acts in contravention of a direction made for the purposes of this Article he is guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.]

^[1] Recueil des Lois, Volume 1996-1997, page 545.

^[2] Recueil des Lois, Volume 1996-1997, page 517.

^[3] Recueil des Lois, Volume 1990-1991, page 39, Volume 1994-1995, page 399, and Volume 1996-1997, pages 607 and 641.

^[4] Recueil des Lois, Volume 1992-1993, page 437.