

# STATES OF JERSEY



## DRAFT SEPARATE LIMITED PARTNERSHIPS (JERSEY) LAW 201-

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

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STATES GREFFE





Jersey

## **DRAFT SEPARATE LIMITED PARTNERSHIPS (JERSEY) LAW 201-**

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

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

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

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

## REPORT

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This Law will provide for the establishment of limited partnerships in Jersey, having legal personality separate from their partners, but without being a body corporate. A limited partnership is a form of partnership having both general and limited partners. The key feature is that the limited partners' liability is limited to their partnership contribution, while the general partners' liability is unlimited. In order to retain this limited liability, the limited partners must not involve themselves in the management of the limited partnership.

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

This Law follows the Scottish model of limited partnership in allowing for the creation of limited partnerships having a legal personality separate from that of the partners but without being a body corporate. Such limited partnerships will be called 'Separate Limited Partnerships' as a contraction of 'Separate Legal Personality Limited Partnerships', which was considered too lengthy to be suitable as a name.

The separate limited partnership will be capable of owning property in its own name (as opposed to limited partnerships under the 1994 Law, which hold property in the name of one or more general partners as an asset of the limited partnership in accordance with the terms of the partnership agreement). The separate limited partnership will also be capable of entering into contracts in its own name. However, unlike a body corporate, it will not have perpetual succession. The existence of the separate legal personality will not affect the rights of the partners as between themselves.

In many ways, separate limited partnerships will be similar to existing Scottish limited partnerships. However, while a Scottish limited partnership must be "between persons carrying on business with a view to profit", Article 3(3) of this Law retains the more flexible Jersey provision that a separate limited partnership may be set up for any lawful purpose.

### **Financial and manpower implications**

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

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

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

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

## Explanatory Note

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This draft Law would create a new kind of legal entity in Jersey – a limited partnership that has separate legal personality but is not a body corporate.

This new form of partnership will be called a separate limited partnership. Together with limited partnerships registered under the Limited Partnerships (Jersey) Law 1994, incorporated limited partnerships established under the proposed Incorporated Limited Partnerships (Jersey) Law 201- and customary law partnerships, it will provide investors and business and professional undertakings with a choice of 4 methods of forming a Jersey partnership in Jersey.

Like a limited partnership and an incorporated limited partnership, it will be subject to the customary law governing partnerships except to the extent that its own statute expressly provides otherwise. In Jersey customary law, a partnership does not possess separate legal personality. This will be the feature that distinguishes a separate limited partnership from other unincorporated limited partnerships. In all other respects, the draft Law follows the 1994 Law.

The concept of an unincorporated partnership having a separate identity from that of its partners is already known in law. Scots partnerships are of that nature.

In Jersey, the Limited Liability Partnerships (Jersey) Law 1997 already provides that a body registered under that law is unincorporated but has separate legal personality.

The present draft Law is set out in the following way –

### *Part 1 – Preliminary*

*Article 1* defines expressions used in the draft Law.

*Article 2* explains the meanings of “solvency” and “insolvency” as used in the draft Law.

### *Part 2 – Establishment of Separate Limited Partnerships*

*Article 3* provides that a separate limited partnership is a separate legal entity from its members, and that as such its capacity is not limited. It also declares that an SLP is not a body corporate.

*Article 4* provides for the registration, by the registrar of separate limited partnerships, of the declaration that must be provided by the proposed general partners on its formation.

*Article 5* provides for amendments of the declaration.

*Article 6* provides that a person may be a general partner and a limited partner, in separate capacities, at the same time.

*Article 7* provides for the name of a separate limited partnership. It must end with its description as such in full, or use either of the abbreviations “S.L.P.” and “SLP”.

*Article 8* provides for its registered office.

*Article 9* provides for its accounts and audit.

*Article 10* provides for the way in which limited partners may contribute to the partnership.

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

*Article 12* provides that the property of a separate limited partnership, (whether title is vested in the name of the SLP itself or of any of the general partners) shall be held for the benefit of the partners in accordance with the terms of the partnership agreement. If the agreement is silent, it is held for the benefit of all of the general and limited partners equally. In any event, it is so held in undivided shares.

*Article 13* sets out the circumstances in which a judgment may be enforced against the partnership's property. The general rule in the case of a limited partnership under the 1994 Law is that judgment cannot be enforced against its property unless the judgment has been obtained against a general partner. Because a separate limited partnership has its own distinct personality, it will be possible to enforce against an SLP's property a judgment that has been obtained against either the SLP itself or against a general partner.

*Article 14* sets out rights of limited partners.

*Article 15* deals with the sharing of limited partners in its profits.

*Article 16* relates to dealings with the partnership by its limited partners.

*Article 17* provides for the rights of limited partners as between themselves.

*Article 18* provides for the return of a limited partner's contribution.

*Article 19* deals with a limited partner's liability to the partnership.

*Article 20* deals with a limited partner's liability to its creditors.

*Article 21* relates to the admission of additional limited partners.

*Article 22* relates to the assignment of a limited partner's interest.

*Article 23* provides for the cancellation of registration of the partnership's declaration.

*Article 24* relates to the filing of a statement of dissolution of a partnership.

*Article 25* relates to the winding up of the partnership.

*Article 26* deals with the dissolution of a partnership that ceases to have a general partner.

Under *Article 27* the Royal Court may, on the application of a partner, order the dissolution of a partnership.

Under *Article 28*, the Royal Court may order a person to comply with a requirement under the draft Law to sign, deliver or permit the inspection or copying of a document.

*Article 29* provides for the settling of accounts on the dissolution of a partnership.

*Article 30* relates to legal proceedings and the service of documents. Legal proceedings by or against a separate limited partnership may be brought in the name of the partnership itself or that of a general partner. If either the SLP or its general partners refuse without good cause to bring any proceedings, a limited partner may do so.

Under *Article 31*, it will be presumed conclusively, in favour of anyone who is not a partner, that a general partner who executes a document on its behalf is authorized to do so and that the document has been validly executed.

### *Part 3 – Miscellaneous and Final Provisions*

*Article 32* constitutes the registrar of companies as the registrar of separate limited partnerships.

*Article 33* enables the Jersey Financial Services Commission to impose an annual administration fee, payable before the end of February in every year following the ones in which they are established, on separate limited partnerships.

It also provides that the States may by Regulations impose an additional amount that is to be payable by SLPs to the Commission with the annual administration fee; and that the Commission is to pay to the Treasurer of the States those additional amounts that it receives.

*Article 34* deals generally with fees, charges and forms.

*Article 35* enables the registrar to accept a document where the form of the document has not been published by the Jersey Financial Services Commission.

*Article 36* provides for the inspection and production of documents kept by the registrar.

*Article 37* enables the destruction of old records.

*Article 38* deals with the keeping of partnership records.

*Article 39* provides for the registration in the Public Registry of Acts and orders made under the Law that affect immovable property.

*Article 40* deals with offences.

*Article 41* deals with the criminal liability of general and limited partners for offences committed by separate limited partnerships under the draft Law.

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

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

*Article 42* enables the States to make Regulations disqualifying persons from acting as general partners of separate limited partnerships, and providing for the audit of SLPs.

It also enables the States to make Regulations amending other enactments to provide that if an offence is committed by an SLP, its general partners and limited partners will be criminally liable to the same extent as they are under *Article 41* in respect of offences committed by SLPs under this draft Law.

*Article 43* enables the Minister to make Orders for the purposes of the draft Law, and of Regulations made under the Law.

*Article 44* provides for Rules of Court for those purposes.



*Article 45* amends other enactments, in the manner described in the Schedule. It also contains referential amendments.

In particular, the Companies (Jersey) Law 1991 is amended to provide that a separate limited partnership is not to be a director of a company.

*Article 46* declares that the customary law of Jersey will apply to separate limited partnerships, except to the extent that it is inconsistent with the express provisions of the draft Law.

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

*Article 47* provides for the citation of the draft Law.

It also provides that it will come into force on a day or days to be appointed by the States, by Act.

The *Schedule* sets out amendments to other enactments.





Jersey

## DRAFT SEPARATE LIMITED PARTNERSHIPS (JERSEY) LAW 201-

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Jersey

## **DRAFT SEPARATE LIMITED PARTNERSHIPS (JERSEY) LAW 201-**

**A LAW** to make provision for the establishment, regulation and dissolution of unincorporated limited partnerships with separate legal personality, and for connected purposes.

*Adopted by the States* [date to be inserted]

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

*Registered by the Royal Court* [date to be inserted]

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

### **PART 1**

#### **PRELIMINARY**

##### **1 Interpretation**

In this Law, unless the context otherwise requires –

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

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998<sup>1</sup>;

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

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

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

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

“Minister” means the Minister for Economic Development;

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

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

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

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

“published” means –

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

“registrar” means the registrar of separate limited partnerships appointed pursuant to Article 32, and the “registrar’s seal” in relation to the registrar means a seal prepared under that Article;

“separate limited partnership” and “SLP” mean a separate limited partnership established in accordance with this Law.

## **2 Meaning of “insolvent” and “solvent”**

For the purposes of this Law, a separate limited partnership is insolvent when the general partner is unable to discharge the debts and obligations of the SLP (excluding liabilities to partners in respect of their partnership interests) as they fall due out of the assets of the SLP without recourse to the separate assets of a general partner not contributed to the SLP, and “solvent” shall be construed accordingly.

## **PART 2**

### **ESTABLISHMENT OF SEPARATE LIMITED PARTNERSHIPS**

## **3 Separate limited partnerships**

- (1) Subject to the provisions of this Law, a separate limited partnership may be formed for any lawful purpose.
- (2) An SLP shall consist of –
  - (a) one or more persons who are general partners; and
  - (b) one or more other persons who are limited partners.
- (3) A body corporate may be a general or a limited partner.

- (4) An SLP is a legal person but not a body corporate.
- (5) An SLP's capacity as a legal person is not limited.

#### **4 Registration of declaration**

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

#### **5 Amendment of declaration**

- (1) If during the continuance of a separate limited partnership any change is made or occurs in any of the particulars delivered pursuant to Article 4 (other than a change in respect of the registered office of the SLP), a statement signed by a general partner, specifying the nature of the change, shall within 21 days of the date of the change be delivered to the registrar.
- (2) On the registration of a statement under this Article, the registrar shall issue a certificate to that effect.
- (3) The certificate shall be signed by the registrar and sealed with the registrar's seal.

- (4) If default is made in compliance with paragraph (1), each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.

## **6 General and limited partners**

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

## **7 Name of partnership**

- (1) The name of each separate limited partnership shall end with the words “Separate Limited Partnership” in full or either of the abbreviations “S.L.P.” and “SLP”.
- (2) The surname of a limited partner shall not appear in the name of the SLP unless it is also the surname of one of the general partners or the SLP has been carried on under that name before the admission of that partner as a limited partner.
- (3) The corporate name or a significant part of the corporate name of a limited partner shall not appear in the name of an SLP unless it is also the corporate name or a significant part of the corporate name of one of the general partners or the SLP has been carried on under that name before the admission of that corporate partner as a limited partner.
- (4) A limited partner whose surname or corporate name appears in the name of the SLP contrary to paragraph (2) or (3) is liable as a general partner to any creditor of the SLP who has extended credit without actual knowledge that the limited partner is not a general partner.
- (5) The registrar may refuse to register a declaration where the name to be registered is in the registrar’s opinion in any way misleading or otherwise undesirable.

## **8 Registered office**

- (1) A separate limited partnership shall have a registered office in Jersey.
- (2) An SLP does not comply with the requirement in paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being their use for that purpose.
- (3) An SLP may change the address of its registered office from time to time by giving notice to the registrar.
- (4) The change shall take effect on the notice being registered by the registrar, but until the end of the period of 14 days beginning on the date on which it is registered, a person may validly serve any document on the SLP at its previous registered office.
- (5) The registrar may refuse to register the notice if he or she is not satisfied that the occupier of the premises that are to be the registered office of the SLP authorizes their use as its registered office.
- (6) An SLP shall keep at its registered office –



- 
- (a) a register showing in alphabetical order for each limited partner –
    - (i) the full name and address of each limited partner who is an individual, or in the case of a limited partner that is not an individual its name, the place where it is incorporated or otherwise established and its registered or principal office,
    - (ii) where the participation by limited partners is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held;
  - (b) a copy of the declaration and each amendment made to it;
  - (c) a copy of the partnership agreement and each amendment made to it;
  - (d) a statement of the amount of any contributions agreed to be made by limited partners and the time at which, or events on the happening of which, the contributions are to be made;
  - (e) a statement of the amount of money and nature and value of any other property or services contributed by each limited partner and the dates thereof;
  - (f) a statement of the amount of contributions returned to limited partners and the dates thereof;
  - (g) such other particulars as may be prescribed.
- (7) The records kept under paragraph (6) shall be –
- (a) *prima facie* evidence of the particulars that are by that paragraph directed to be contained therein;
  - (b) amended within 21 days of any change in the particulars contained therein;
  - (c) available for inspection and copying without charge during ordinary business hours at the request of a partner.
- (8) The registrar may require an SLP to produce its register during normal working hours to the registrar at its registered office, for inspection by the registrar.
- (9) A requirement under paragraph (8) shall be made by a notice in writing served on the SLP. The notice shall specify a date and a time at which the partnership is to produce the register.
- (10) The Minister may prescribe information that –
- (a) an applicant for the formation of an SLP; or
  - (b) an SLP,
- must provide to the registrar for the purpose of showing that an occupier of premises authorizes or continues to authorize the use of the premises as its registered office.
- (11) An Order under paragraph (10) may contain such other provisions as are reasonably necessary for or incidental to that purpose.

- (12) If default is made in compliance with any requirement made by or under this Article, each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.

## **9 Accounts and audit**

- (1) A separate limited partnership shall keep accounting records that are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy at any time the financial position of the SLP.
- (2) Unless the partnership agreement or Regulations made under Article 43 otherwise provide, it shall not be necessary for an SLP to appoint an auditor or have its accounts audited.
- (3) If default is made in compliance with this Article, each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.

## **10 Contribution of limited partner**

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

## **11 Rights and obligations of general partner**

- (1) Subject to paragraph (2), a general partner in a separate limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners.
- (2) Without written consent or ratification by all the limited partners, a general partner has no authority –
- (a) to do an act that makes it impossible to carry on the activities of the SLP;
  - (b) to possess SLP property, or dispose of any rights in SLP property, for other than a partnership purpose; or
  - (c) to admit a person as a general partner or to admit a person as a limited partner, unless the right to do so is given in the partnership agreement.
- (3) Any debt or obligation incurred by a general partner in the conduct of the activities of an SLP shall be a debt or obligation of the SLP.

## **12 Partnership property**

- (1) The property of a separate limited partnership shall be held for the benefit of the partners in accordance with the terms of the partnership agreement or, if the partnership agreement is silent, for the benefit of all of the general partners and limited partners in equal shares.
- (2) The property of the SLP shall be so held in undivided shares, and –

- (a) as between the partners, no partner shall be entitled individually to exercise proprietary rights in respect of the property; and
  - (b) in relation to third parties, the partners shall be collectively entitled to the property.
- (3) This Article applies whether title to the property is vested in the name of the SLP itself or of any one or more of the general partners.

### **13 Enforcement of judgments against property of separate limited partnership**

- (1) No judgment shall be enforced against any property of a separate limited partnership unless such judgment has been granted against the SLP or against a general partner in his or her capacity as a general partner of that SLP.
- (2) Creditors of a general partner or a limited partner, in that partner's capacity other than as a general partner or a limited partner of the SLP, shall have no claim against the property of that SLP.

### **14 Rights of limited partner**

- (1) A limited partner has the same right as a general partner –
- (a) during business hours, to inspect and make copies of or take extracts from the separate limited partnership records at all times;
  - (b) to be given, on demand, true and full information of all things affecting the SLP and to be given a formal account of partnership affairs whenever circumstances render it just and reasonable.
- (2) A limited partner shall not be entitled to dissolve the SLP by notice.
- (3) Subject to any provision, express or implied, of the partnership agreement to the contrary, an SLP shall not be dissolved by –
- (a) the death, legal incapacity, bankruptcy, retirement or withdrawal from the SLP of a limited partner who is an individual; or
  - (b) the dissolution, bankruptcy or withdrawal from the SLP of a limited partner that is not an individual.

### **15 Share of profits**

- (1) A limited partner has, subject to this Law and the partnership agreement, the right to a share of the profits of the separate limited partnership.
- (2) It is immaterial whether or not the share of the profits is distributed to the limited partner.
- (3) A limited partner may receive from the SLP by way of distribution the share of the profits stipulated for in the partnership agreement only if, at the time when and immediately after payment is made, the SLP is solvent.
- (4) For a period of 6 months from the date of receipt by a limited partner of any payment representing a share of the profits of the SLP in

circumstances where the requirements of paragraph (3) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such share of the profits is necessary to discharge a debt or obligation of the SLP incurred during the period that the share of the profits represented an asset of the SLP.

#### **16 Dealings by limited partner with partnership**

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

#### **17 Limited partners' rights as between themselves**

- (1) Subject to paragraph (2), limited partners, in relation to one another, shall rank –
  - (a) *pari passu* in respect of the return of their contributions; and
  - (b) *pro rata* to those contributions in respect of profits.
- (2) Where there is more than one limited partner, the partnership agreement may provide that one or more of the limited partners is to have greater rights than the other limited partners as to –
  - (a) the return of contributions;
  - (b) profits; or
  - (c) any other matter.

#### **18 Return of limited partner's contribution**

- (1) A limited partner shall not, on dissolution or otherwise, receive out of the capital of the separate limited partnership a payment representing a return of any part of the limited partner's contribution to the partnership unless at the time of and immediately following such payment the SLP is solvent.
- (2) For a period of 6 months from the date of receipt by a limited partner of any payment representing a return of contribution or part thereof received by such limited partner in circumstances where the requirements of paragraph (1) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the SLP incurred during the period that the contribution represented an asset of the SLP.
- (3) Except –
  - (a) as provided in paragraph (2); or

- (b) in the case of fraud,  
a limited partner shall not be liable to repay any payment representing a return of the limited partner's contribution or of part of his or her contribution.
- (4) Subject to paragraphs (1) and (2), a limited partner may demand payment representing the return of all or part of his or her contribution –
  - (a) on the dissolution of the SLP;
  - (b) at the time specified in the partnership agreement for its return; or
  - (c) after the limited partner has given 6 months' notice in writing to all other partners, if no time is specified in the partnership agreement either for the return of the contribution or for the dissolution of the SLP.
- (5) A limited partner has, notwithstanding the nature of his or her contribution, only the right to demand and receive money in return for it, unless –
  - (a) there is a statement to the contrary in the partnership agreement; or
  - (b) all the partners consent to some other manner of returning the contribution.
- (6) In this Article, "payment" includes the release of any obligation forming part of the capital contribution, and any liability to make repayments pursuant to paragraph (2) shall be construed accordingly.

## **19 Limited partner's liability to partnership**

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

## **20 Limited partner's liability to creditors**

- (1) Except as provided in Article 19 or 30(2), or in any other provision in this Law, a limited partner is not liable for the debts or obligations of the separate limited partnership.
- (2) A limited partner is not liable as a general partner unless he or she participates in the management of the SLP.
- (3) Subject to paragraph (4), if a limited partner participates in the management of the SLP in its dealings with persons who are not partners, that limited partner shall be liable in the event of the insolvency of the SLP for all debts and obligations of the SLP incurred during the period that he or she participated in the management of the SLP as though he or she were for that period a general partner.
- (4) A limited partner shall be liable, under paragraph (3), only to a person who transacts with the SLP with actual knowledge of the participation of

the limited partner in the management of the SLP and who then reasonably believed the limited partner to be a general partner.

- (5) A limited partner does not participate in the management of an SLP within the meaning of this Article by doing one or more of the following –
- (a) being a contractor for or an agent or employee of the SLP or of a general partner, or acting as a director, partner or officer of or being a shareholder of a general partner that is not an individual;
  - (b) consulting with and advising a general partner with respect to the activities of the SLP;
  - (c) investigating, reviewing, approving or being advised as to the accounts or affairs of the SLP or exercising any right conferred by this Law;
  - (d) acting as surety or guarantor for the SLP either generally or in respect of specific obligations;
  - (e) approving or disapproving an amendment to the partnership agreement; or
  - (f) voting on, or otherwise signifying approval or disapproval of, one or more of the following –
    - (i) the dissolution and winding up of the SLP,
    - (ii) the purchase, sale, exchange, lease, pledge, hypothecation, creation of a security interest, or other dealing in any asset by or of the SLP,
    - (iii) the creation or renewal of an obligation by the SLP,
    - (iv) a change in the nature of the activities of the SLP,
    - (v) the admission, removal or withdrawal of a general or a limited partner and the continuation of the SLP thereafter, or
    - (vi) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners;
  - (g) bringing an action on behalf of the SLP pursuant to Article 30(3).
- (6) Paragraph (5) shall not import any implication that the possession or exercise of any other power by a limited partner will necessarily constitute the participation by such limited partner in the management of the SLP.

## **21 Admission of additional limited partners**

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

## **22 Assignments**

- (1) A limited partner shall not assign his or her interest, in whole or in part, in the separate limited partnership unless –

- 
- (a) all the limited partners and all the general partners consent or the partnership agreement permits it; and
    - (b) the assignment is made in accordance with the terms of the consent or the partnership agreement, as the case may be.
  - (2) An assignee of the interest, in whole or in part, of a limited partner does not become a limited partner in the SLP until the assignee's ownership of the assigned interest is entered in the register referred to in Article 8(6)(a), and until so entered he or she has none of the rights of a limited partner exercisable against the partnership or against any of the partners other than the assignor.
  - (3) Subject to paragraph (4), on becoming a limited partner, an assignee acquires the rights and powers and is subject to all the restrictions and liabilities that his or her assignor had in respect of the assigned interest immediately before the assignment.
  - (4) On becoming a limited partner an assignee shall not assume any liability of the assignor arising under Article 15(4), 18(2) or 20(3) and, notwithstanding any term of the partnership agreement or any other agreement to the contrary, no such assignment shall relieve the assignor of any liability under those paragraphs.

### **23 Cancellation of registration**

The registrar shall cancel the registration of the declaration of a separate limited partnership on the occurrence of any of the following events –

- (a) on the delivery to the registrar of a request for its cancellation, signed by each person who is, or is on the formation of the SLP to be, a general partner;
- (b) on the delivery to the registrar under Article 24 of a statement of dissolution of the SLP;
- (c) on the delivery to the registrar under Article 26 of a statement of dissolution of the SLP;
- (d) on receiving under Article 27 an Act of the Royal Court ordering the dissolution of the SLP.

### **24 Statement of dissolution**

- (1) Except as provided in Articles 26 and 27, a separate limited partnership shall not be dissolved by an act of the partners until a statement of dissolution signed by a general partner has been delivered by the general partner to the registrar.
- (2) If default is made in compliance with this Article, each of the general partners is guilty of an offence and liable to a fine of level 4 on the standard scale.

**25 Winding up of separate limited partnership**

In the event of the dissolution of a separate limited partnership its affairs shall be wound up by the general partners unless the activities of the SLP are taken over and continued in accordance with Article 26(2) or unless the Royal Court otherwise directs under Article 27(2).

**26 Dissolution of partnership on death etc., of general partner**

- (1) Notwithstanding any provision, express or implied, of the partnership agreement to the contrary, but subject to paragraph (2) –
  - (a) where the sole or last remaining general partner is an individual, the general partner's death, legal incapacity, bankruptcy, retirement or withdrawal from the separate limited partnership; or
  - (b) where the sole or last remaining general partner is a body corporate, its dissolution, bankruptcy or withdrawal from the SLP,shall cause the immediate dissolution of the SLP which shall forthwith be wound up –
  - (i) in accordance with the partnership agreement; or
  - (ii) on the application of a limited partner or a creditor of the SLP, in accordance with the directions of the Royal Court.
- (2) An SLP shall not be required to be wound up under paragraph (1) if, within 90 days of the dissolution, the limited partners, either unanimously or as otherwise provided for in the partnership agreement, elect one or more general partners, in which event the SLP shall be deemed not to have been dissolved and the activities of the SLP may be taken over and continued as provided for in the partnership agreement or a subsequent agreement.
- (3) If an SLP is dissolved under paragraph (1), and the activities of the SLP are not taken over and continued in accordance with paragraph (2), a statement of dissolution signed by a limited partner shall be delivered by him or her to the registrar.
- (4) Subject to paragraph (1) and to any provision, express or implied, of the partnership agreement to the contrary, an SLP shall not be dissolved by –
  - (a) the death, legal incapacity, bankruptcy, retirement or withdrawal from the SLP of a general partner who is an individual; or
  - (b) the dissolution, bankruptcy or withdrawal from the SLP of a general partner that is not an individual.

**27 Power of Court to order dissolution**

- (1) The Royal Court may, on the application of a partner, order the dissolution of a separate limited partnership if it is satisfied that –
  - (a) the SLP is being conducted in a manner calculated or likely to affect prejudicially the carrying out of the activities of the SLP;
  - (b) the SLP is being conducted in a manner oppressive to one or more of the limited partners; or



- (c) circumstances have arisen that render it just and equitable that the SLP be dissolved.
- (2) Where an order is made under paragraph (1) the Royal Court may give such directions as it thinks fit as to the winding up of the SLP.
- (3) When an SLP has been dissolved under this Article the partner making the application shall cause the relevant Act of the Royal Court to be delivered to the registrar within 21 days after the making of the order.

## **28 Order for compliance**

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

## **29 Settling accounts on dissolution**

Where accounts are settled after the dissolution of a separate limited partnership, the liabilities of the SLP to creditors, except to –

- (a) limited partners on account of their contributions or profits; and
- (b) general partners,

shall be paid first and then, subject to the partnership agreement or to a subsequent agreement, the other liabilities of the SLP shall be paid in the following order –

- (i) to general partners other than for capital and profits;
- (ii) to limited partners in respect of the capital of their contributions;
- (iii) to limited partners in respect of their share of the profits on their contributions;
- (iv) to general partners in respect of capital;
- (v) to general partners in respect of profits.

## **30 Legal proceedings and service of documents**

- (1) Except as provided in this Law, legal proceedings by or against a separate limited partnership shall be instituted by or against the SLP or by or against any one or more of the general partners only, and no limited partner shall be a party to or named in such proceedings.
- (2) An SLP or general partner or, with the leave of the Royal Court, any other person shall have the right to join or otherwise institute proceedings

against one or more of the limited partners who may be liable to the SLP pursuant to –

- (a) Article 15(4);
  - (b) Article 18(2);
  - (c) Article 19; or
  - (d) Article 20(3).
- (3) A limited partner may bring an action on behalf of an SLP if the SLP or any one or more of the general partners with authority to do so have, without good cause, refused to institute such proceedings.
- (4) For the purposes of this Law, service of a document on an SLP may be effected by sending it by post to or delivering it to the registered office of the SLP.
- (5) For the purposes of this Law, service of a document on a general partner in respect of an SLP may be effected by –
- (a) delivering it to the general partner; or
  - (b) sending it by post or delivering it to the registered office of the SLP.
- (6) In this Article, “registered office” means –
- (a) the office that is for the time being shown as the registered office of the SLP in the register maintained under Article 4(4); or
  - (b) if the registrar has under Article 8(4) registered a notice of change of address, the office that is for the time being shown as the registered office of the SLP in the last notice so registered.

### **31 Authority to sign**

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

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

## **PART 3**

### **MISCELLANEOUS AND FINAL PROVISIONS**

### **32 Appointment of registrar, etc.**

- (1) The registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991<sup>2</sup> shall be the registrar of separate limited partnerships.
- (2) The Commission may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the establishment of SLPs.

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

### **33 Annual administration fee**

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

### **34 Fees, charges and forms**

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

### **35 Form of documents to be delivered to registrar**

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

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

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

### **36 Inspection and production of documents kept by registrar**

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

### **37 Destruction of old records**

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

### **38 Form of separate limited partnership's records**

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

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

### **39 Registration in the Public Registry**

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

### **40 Offences**

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

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

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

### **41 Criminal liability of partners, directors and other officers**

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

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- (5) This Article does not apply to an offence under Article 40.
  - (6) The States may by Regulations amend any enactment other than this Law to provide that if a specified offence by a separate limited partnership –
    - (a) is proved to have been committed with the consent or connivance of one of its general partners, or of one of its limited partners who is participating in its management; or
    - (b) to be attributable to any neglect on the part of either of such partners,the partner concerned shall also be guilty of the offence and liable in the same manner as the SLP to the penalty provided for that offence.

## 42 Regulations

- (1) The States may by Regulations –
  - (a) provide for the disqualification of persons for office as general partners of separate limited partnerships; and
  - (b) provide for the audit of SLPs.
- (2) Regulations made under paragraph (1) may –
  - (a) stipulate and require qualifications for auditors, require and provide for their registration, require and provide for their appointments and provide for their functions, powers, duties, status and immunities; and
  - (b) provide for the ineligibility and disqualification of persons for appointment as auditors, the disciplinary control of auditors (including the suspension and revocation of registration), and the suspension and removal of persons appointed as auditors of particular SLPs.
- (3) Paragraph (2) does not limit the generality of paragraph (1).
- (4) Regulations made under paragraph (1) may provide for the Minister or Commission to exercise a discretion in respect of matters provided for in the Regulations.
- (5) Regulations made under paragraph (1) may create offences, and may impose penalties for such offences not exceeding imprisonment for 2 years and a fine.

## 43 Orders

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

**44 Rules of Court**

The power to make Rules of Court under the Royal Court (Jersey) Law 1948<sup>3</sup> shall include a power to make Rules for the purposes of this Law.

**45 Amendments to other enactments**

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

**46 Relationship to other law**

- (1) The rules of customary law applicable to partnerships (*contrats de société*) shall apply to separate limited partnerships except in so far as they are inconsistent with the express provisions of this Law.
- (2) Nothing in the Limited Partnerships (Jersey) Law 1994<sup>4</sup> shall apply to a separate limited partnership.

**47 Citation and commencement**

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

**SCHEDULE**

(Article 45(1))

**AMENDMENTS TO OTHER ENACTMENTS****1 Control of Borrowing (Jersey) Law 1947<sup>5</sup>**

After Article 1(2) there shall be inserted the following paragraph –

“(2A) In this Law –

- (a) any reference to a limited partnership within the meaning of the Limited Partnerships (Jersey) Law 1994 includes a reference to a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 201-<sup>6</sup>; and
- (b) the reference in Article 2(10)(b) to the Limited Partnerships (Jersey) Law 1994 in respect of a limited partnership includes a reference to the Separate Limited Partnerships (Jersey) Law 201- in respect of a separate limited partnership.”.

**2 Registration of Business Names (Jersey) Law 1956<sup>7</sup>**

In Article 1(1), in the definition “limited partnership”, after the figures “1994” there shall be inserted the words “or a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 201-<sup>8</sup>.”.

**3 Collective Investment Funds (Jersey) Law 1988<sup>9</sup>**

- (1) In Article 5(2), after the figures “1994” there shall be inserted the words “or a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 201-<sup>10</sup>.”.
- (2) In Article 8(1)(c)(i), after the figures “1994” there shall be inserted the words “or a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 201-.”.
- (3) In Article 8A(1)(c), after the words “a limited partnership” there shall be inserted the words “, a separate limited partnership”.
- (4) In Article 8B(10)(b)(iii), after the words “a limited partnership” there shall be inserted the words “, a separate limited partnership”.

**4 Companies (Jersey) Law 1991<sup>11</sup>**

- (1) For Article 4(2)(e) there shall be substituted the following subparagraph –



“(e) the name and address of the registered office or principal office of each subscriber which is a person other than a natural person.”.

(2) After Article 73(4) there shall be added the following paragraph –

“(4A) A separate limited partnership (as defined in Article 1 of the Separate Limited Partnerships (Jersey) Law 201-<sup>12</sup>) shall not be a director of a company.”.

## 5 Limited Partnerships (Jersey) Law 1994<sup>13</sup>

(1) In Article 9(2), for the words “Unless the partnership agreement otherwise provides” there shall be substituted the words “Unless the partnership agreement or Regulations made under Article 37A otherwise provide”.

(2) In Article 18, after the word “property” in both places where it appears, there shall be inserted the words “or services”.

(3) After Article 28(4) there shall be added the following paragraph –

“(5) In this Article, ‘registered office’ means –

(a) the office that is for the time being shown as the registered office of the limited partnership in the register maintained under Article 4(4); or

(b) if the registrar has under Article 8(3) registered a notice of change of address, the office that is for the time being shown as the registered office of the limited partnership in the last notice so registered.”.

(4) After Article 30 there shall be inserted the following Article –

### “30A Annual administration fee

(1) The Commission may require the payment to it by a limited partnership of a published annual administration fee.

(2) The States may by Regulations provide that, in addition to the annual administration fee, a limited partnership shall pay to the Commission annually such amount as the States determine in the Regulations.

(3) The annual administration fee and the annual additional amount (if any) are payable by a limited partnership to the Commission before the end of February in each year.

(4) An annual administration fee and an annual additional amount (if any) are debts due by a limited partnership to the Commission, and are recoverable accordingly in a court of competent jurisdiction.

(5) The Commission shall pay to the Treasurer of the States the additional amounts that are paid to the Commission under Regulations made under paragraph (2).”.

(5) For Article 36 there shall be substituted the following Article –

**“36 Offences**

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

- (a) which is required to be kept under Article 8(4); or
- (b) which is required to be delivered to the registrar under this Law,

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

- (6) After Article 37 there shall be added the following Article –

**“37A Regulations**

- (1) The States may by Regulations –

- (a) provide for the disqualification of persons for office as general partners of limited partnerships; and
- (b) provide for the audit of limited partnerships.

- (2) Regulations made under paragraph (1) may –

- (a) stipulate and require qualifications for auditors, require and provide for their registration, require and provide for their appointments and provide for their functions, powers, duties, status and immunities; and
- (b) provide for the ineligibility and disqualification of persons for appointment as auditors, the disciplinary control of auditors (including the suspension and revocation of registration), and the suspension and removal of persons appointed as auditors of particular limited partnerships.

- (3) Paragraph (2) does not limit the generality of paragraph (1).

- (4) Regulations made under paragraph (1) may provide for the Minister or Commission to exercise a discretion in respect of matters provided for in the Regulations.

- (5) Regulations made under paragraph (1) may create offences, and may impose penalties for such offences not exceeding imprisonment for 2 years and a fine.”.

- (7) For Article 38(1) there shall be substituted the following paragraph –

“(1) The Minister may by Order make provision for the purpose of carrying this Law or any Regulations made under this Law into effect and in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which is to be prescribed under this Law or the Regulations.”.

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- 1* chapter 13.250
  - 2* chapter 13.125
  - 3* chapter 07.770
  - 4* chapter 13.500
  - 5* chapter 24.150
  - 6* P.46/2010
  - 7* chapter 13.650
  - 8* P.46/2010
  - 9* chapter 13.100
  - 10* P.46/2010
  - 11* chapter 13.125
  - 12* P.46/2010
  - 13* chapter 13.500