

STATES OF JERSEY



Jersey

DRAFT LIMITED PARTNERSHIPS (AMENDMENT No. 2) (JERSEY) LAW 202-

**Lodged au Greffe on 9th March 2022
by the Minister for External Relations and Financial Services
Earliest date for debate: 25th April 2022**

STATES GREFFE



Jersey

DRAFT LIMITED PARTNERSHIPS (AMENDMENT No. 2) (JERSEY) LAW 202-

European Convention on Human Rights

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

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

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

Minister for External Relations and Financial Services

Dated: 8th March 2022

REPORT

1. Background and purpose of the Draft Law

Jersey's Funds sector is one of the key growth areas of our financial services industry. It has international reach and offers investors and promoters alike a tax neutral location for their investment combined with resilient and expert fund administration services. The Jersey limited partnership is the preferred legal structure to use for international funds managed out of Jersey.

A business case to update the [Limited Partnerships \(Jersey\) Law 1994](#) (the "Law") was submitted by the Funds Industry to government in 2018 and again, in revised form, in late 2020. The business case requested changes to the Law to reflect enhancements in other jurisdictions and to resolve ambiguities which have been identified in the Law, particularly around the process for terminating a limited partnership. This Draft Amendment No. 2 Law seeks to address this issue around termination as set out below.

Under the Draft Law, the statute would require winding up of the limited partnership to take place first before dissolution. This is contrary to the common law position but reflects the position adopted in other jurisdictions. The only exception to this is where the general partner of a limited partnership is in default of its statutory obligations. In such circumstances, the Registrar has an extraordinary power to dissolve the limited partnership before it is wound up by cancelling its registration. Where this occurs, the general partner's powers are restricted so that it can only act to facilitate the winding up of the limited partnership or its reinstatement. Limited partners' limited liability is protected in these circumstances. Dissolution under the Draft Law occurs only upon the cancellation of the registration of the limited partnership by the Registrar regardless of what may the partnership agreement may provide.

To remedy any potential harm caused to limited partners and creditors of the limited partnership by this new termination process, a reinstatement process has been introduced whereby the Court has full discretion to deal with the application as it sees fit.

This new termination process and the new power of the Registrar to cancel the registration and dissolve a limited partnership reflects changes to the Law which the Registry had also identified as necessary following a review of Jersey's limited partnership regime. The review concluded that improvements were required to the Registry's supervision and control of limited partnerships on the register. There are a significant number of limited partnerships on the register which are in default of their statutory obligations and believed to be inactive or fully wound up but not properly removed from the register. The Registrar presently has inadequate powers to remove them from the register or to enforce the statutory penalties contained in the Law against the defaulting general partner of the limited partnership. The Review also concluded that the Registry's powers of supervision over limited partnerships was inadequate and that a new annual reporting obligation was required. This has been incorporated into the Draft Law.

The changes requested by the Registry form part of the necessary improvements to the supervisory and enforcement powers of the Registry required for Jersey's next assessment by MONEYVAL. It is important that the Draft Law is brought into effect now as the Registry will need to demonstrate for MONEYVAL the exercise and implementation of its new enhanced supervisory and enforcement powers.

Importantly, the Draft Law will ensure the register of limited partnerships is kept up-to-date and accurate. The prioritisation of the Draft Law is aligned to Government's recently published refreshed financial services strategic priorities to maintain and develop Jersey's framework for its Funds sector and to deliver its financial crime strategy.

2. Consultation

The Government issued a month-long public legislative consultation on the Draft Legislation in December last year. The Draft Law was developed by a group of experts drawn from industry (the "**Working Group**"). To ensure all relevant persons affected by the changes were aware of the consultation, Government wrote to all limited partnerships registered in Jersey. Together with Jersey Finance, Government also held a virtual "townhall" event in early January which was attended by over 50 representatives from industry. The public consultation was also advertised on the Jersey Finance newsletter.

Government received one written response to the consultation from a registered limited partnership to advise it had ceased to exist albeit no formal notification to remove it from the register had been made. It should also be noted that a number of letters were 'returned to sender' in consequence of its mailing to all registered Jersey limited partnerships. This is further evidence of the need for the Draft Law and the increased supervision and enforcement powers for the Registrar, as maintaining the correct registered address for a limited partnership is a statutory obligation under the Law, and these limited partnerships are clearly in default.

The only substantive industry concern raised at the industry "townhall" event was as to the operation of the new statutory termination process as against the customary law rules of partnership. This has been considered and informal advice was taken from a leading academic on the issue. It was concluded that the new statutory termination process under the Draft Law operated as a statutory overlay to the customary law and therefore did not raise any issues.

The Registry has been fully engaged throughout the process and is a member of the Working Group. The Supervisory Policy Team of the Jersey Financial Services Commission has also engaged with the Working Group and commented on the Draft Law and is content with the proposed Draft Law. The Registry is ready to revise its forms and processes to enable the new annual reporting obligation and new process for terminating limited partnerships under the Draft Law to operate. These will come into effect once the Privy Council has given final approval of the Draft Law.

3. Details of Draft Law

In summary the Draft Law sets out the new statutory process for terminating a limited partnership registered in Jersey and makes enhancements to the existing Law to improve its flexibility, clarity and to reflect modern improvements made to equivalent laws in competitor jurisdictions.

The key features of the Draft Law are outlined below (references in the headings are to Articles under the Draft Law and the connected Article under the Law, other references are to the Article in the Law as amended):

- (a) Article 1
This provides that the Draft Law amends the Law.
- (b) Article 2 – amending Article 1 Definitions and interpretation

The Draft Law introduces the following new definitions:

- (i) “*Continued default*” – this definition operates together with the Registrar’s new powers under Article 21A(3) of the Law to remove defaulting limited partnerships from the register. It provides that for a limited partnership to be in continued default, it must have defaulted on one or more of its statutory duties (listed in the definition) and the Registrar shall have given the general partner of the limited partnership 30 days’ notice of this fact.
- (ii) “*Delivery*” and “*electronic*” – these definitions allow for any information or documents which are required to be delivered under the Law to be capable of being delivered by electronic means, i.e., uploaded onto the registry’s systems. This forms part of the JFSC’s enablement of digital means of communication for industry.
- (iii) “*Nominated person*” – this definition allows for the general partner to authorise a nominated person to carry out some or all its statutory duties in notifying and providing documents under the Law. Liability for these duties will remain with the general partner. This will simply facilitate administrative ease in complying with these duties.
- (iv) “*Relevant authorities*” – this definition provides which authorities’ consent is required under Article 21A of the Law where a limited partnership wishes to continue in a different legal form and cancel its registration as a limited partnership.

(c) Article 3 – amending Article 3 – Limited partnership

This provision sets out the constitutional requirements of a limited partnership. It has been amended to clarify that the purpose of a limited partnership does not need to be for profit. The law was silent on the matter, but it is a customary law requirement of partnership law, which the Law would need to override. However, in practice this has caused issues. In certain fund structure the limited partnership may not be profit-making. This has caused industry to create artificial profits to assign to the limited partnership to ensure its legal validity. Such a provision has been incorporated into other jurisdictions’ law to oust the customary law position.

Further this provision has been altered to provide that incorporated, unincorporated bodies and other partnerships (which are neither) may be either a general or limited partner. This reflects the needs of modern-day fund structuring. It is aligned to other equivalent jurisdictions’ laws and gives the greatest flexibility to the ownership structures of the partners/investors in fund limited partnerships.

(d) Article 4 – amending Article 4 – Registration of declaration

The requirement to specify the term of the limited partnership has been removed in the declaration filed with the Registrar. With the new process for termination, which ensures that the limited partnership is properly wound up before it is dissolved, this is no longer required. Its inclusion has resulted in unintentional statutory default by fund limited partnerships where the term had been extended but not notified to the Registrar.

(e) Article 5 – amending Article 5 – Amendment of declaration

As the particulars which are required to be declared under Article 4 of the Law (above) have been altered by the Draft Law, the language of this provision needed to reflect that the obligation to update the Registrar of changes to the declaration should only be required in respect of those changes relevant to what was required of the declaration under the current version of the Law. This amendment will help future proof this provision if further changes were made as to what was required to be declared under Article 4 of the Law.

(f) Article 6 – introducing a New Article 5A – Annual confirmation

To ensure more regular reporting and thereby better supervision of limited partnerships, this new annual reporting requirement has been added to the Law by the Draft Law. The provision allows that disclosure of additional information may be prescribed by order as part of this annual obligation. This anticipates the statutory reporting of beneficial ownership information which is due to apply to all limited partnerships following the extension of the EU's beneficial ownership disclosure rules to partnerships.

(g) Article 7 – amending Article 7 – Name of limited partnership

This provision has been substituted in its entirety under the Draft Law to reflect the naming conventions which operate in competitor jurisdictions, allowing the names of partners to be included in the name provided the name is not calculated or likely to mislead. It removes the liability to creditors of a limited partner whose liability is determined purely by his or her name appearing in the name of the limited partnership. This was deemed highly undesirable by industry and misaligned to other jurisdiction's law. It was considered there was adequate protection for creditors under Article 19 of the Law and by the requirement that the name should not be misleading. In addition, the Registrar has power to reject a name if it is misleading or undesirable and to issue guidance in this regard.

(h) Article 8 – amending Article 8 – Registered office

The Draft Law alters the right of a partner to inspect or copy all the records of the limited partnership kept by the general partner at the registered office. The right is now made subject to the terms of the partnership agreement and any other legal restrictions made under the Law. Certain information held in the records of the limited partnership may be commercially very sensitive. This is particularly the case with complex fund structures which have limited partner carry interests and other bespoke terms. The risk of an unrelated person acquiring this information merely as an investor in the same fund structure is damaging to Jersey's fund industry. The recent case of *IQQ 1986 Limited v Agilitas Private Equity GP Limited and Ors 23 June 2020* left the position unclear. The Draft Law provides certainty now as to how disclosure may be required.

(i) Article 9 – amending Article 10 – Contribution of limited partner

This provision has been altered to allow for the contributions of a limited partner to be paid up or owing by way of a loan. This reflects the position under equivalent jurisdictions' laws and general practice. It does not diminish the limited partner's liability.

(j) Article 10 – amending Article 11 – Rights and obligations of a general partner

The Draft Law removes the specified statutory restrictions on a general partner's authority to act previously included in Article 11(1) of the Law. The Draft Law allows a general partner full power and authority to act on behalf of the limited partnership with such power and authority only being subject to the terms of the partnership agreement and to any restrictions under the Law as amended by the Draft Law. This reflects the position under equivalent jurisdictions' laws but altered to take account of the new termination process where a limited partnership in continued default is struck off the register. Where this circumstance applies there are express restrictions on the powers of the general partner to ensure the proper winding up of the limited partnership and protection of third parties (new Article 21C of the Law). During a limited partnership's lifetime there are no such statutory restrictions under the Draft Law.

(k) Article 11 – amending Article 13 – Rights of limited partner

Article 13(1) has been amended to reflect the position that the rights of the limited partner to disclosure of partnership records are subject to the terms of the partnership agreement. This is consistent with the change made under Article 8 of the Law.

Article 13(2) and 13(3) of the Law which previously operated to override the customary law rules for partnerships have been altered to reflect the new statutory position and process for dissolution of a limited partnership under the Draft Law. Dissolution of a limited partnership can now only occur under the Law as amended by the Draft Law. The partners and the partnership agreement can no longer provide for dissolution other than in accordance with the relevant provisions set out in the Law. Dissolution under the Draft Law is now the final act of the limited partnership rather than the act which placed it into winding up.

(l) Article 12 – amending Article 14 – Share of profits

The statutory clawback provision under Article 14(3) of the Law has been clarified. The 6-month statutory period for clawback where profits were paid out to a limited partner when the limited partnership was insolvent remains. However, the operation of this provision was previously linked to a debt of the limited partnership incurred during the period the share of the profits represented an asset of the limited partnership. This created great complexity as certain debts pre-dated the earning of profits. It has therefore been removed. Instead, any profits paid out when the limited partnership is insolvent are recoverable during a 6-month period or, as additionally provided for under the Draft Law, for such longer period as the partnership agreement may provide.

(m) Article 13 – amending Article 15 – Dealings by limited partner with partnership

The reference to a contribution being a *capital* contribution has been removed as the Law used capital contribution and contribution interchangeably, neither being defined. The preference was to refer only to a limited partner's contribution. Its status as being made up of capital or income or a mixture of both is unnecessary to specify as this will be determined by the tax rules which apply.

- (n) Article 14 – amending Article 16 – Limited partners’ rights as between themselves

This provision has been amended to allow for the partnership agreement to provide that a limited partner has no rights to receive a return of contributions or profits rather than the partnership agreement only provide for differing rights to apply to different limited partners.

- (o) Article 15 – introducing a New Article 16A – Third party rights

As there is no third-party contract law in Jersey law, it was considered helpful for this provision to be added, as it has to the LLC law and to the Trusts law, to provide certainty and ensure third party rights under the partnership agreement are capable of being enforced.

- (p) Article 16 – amending Article 17 – Return of limited partner’s contributions

The clawback provisions in Article 17(2) of the Law are amended by the Draft Law in the same manner as in Article 14(2) of the Law – see above, for reasons equivalent to those described in respect of Article 14(2) of the Law.

In addition, following the change to the order in which a limited partnership is now terminated with winding up occurring before dissolution, and dissolution only occurring after the cancellation of registration, references in this provision to dissolution have been amended to winding up.

- (q) Article 17 – introducing a New Article 17A – Remedies against partner

Forfeiture provisions are common in most partnership agreements but due to the customary law position is not always clear as to whether they are enforceable. This provision addresses this issue and provides certainty that any penalty or sanction imposed under the partnership agreement for non-compliance with its terms are enforceable.

- (r) Article 18 – amending Article 18 – Limited partner’s liability to partnership

Article 18(1) has been amended to track the language used in Article 8(e) of the Law to define the value or amount of the contribution made by the limited partner to the limited partnership and recorded in the general partner’s records. It also has been amended so that it is made subject to the partnership agreement. It is common under partnership agreements that certain events may trigger new and additional contributions to be made by limited partners as investors in a fund or to reduce the original contribution made by the limited partner. This needed to be reflected in the Law.

Article 18(2) has been added to clarify that where a limited partnership is insolvent, the general partner is liable for the debts and obligations of the limited partnership. This is in accordance with the stated position under competitor jurisdiction’s laws. It also provides better protection to creditors to allow them to pursue the general partner personally (as the party responsible for the management of the limited partnership during its’ lifetime) in the event the limited partnership has insufficient assets to cover its debts and obligations.

- (s) Article 19 – amending Article 19 – Limited partner’s liability to creditors
This provision has been updated to reflect the position under equivalent jurisdictions’ laws to ensure the liability of a limited partner and the protections afforded to a limited partner under Jersey law is aligned to our competitor jurisdictions’ laws.

Accordingly, the statutory test of knowledge previously set out in Article 19(4) and period of liability in Article 19(3) of the Law by which a limited partner is deemed to have participated in the management of the limited partnership and directly liable to its creditors has been clarified and altered to reflect the equivalent provision under one of Jersey’s competitor jurisdictions’ laws.

Similarly, the list of activities which are deemed under the Law not to constitute participating in the management of the limited partnerships have been expanded to capture the equivalent provisions in competitor jurisdictions’ laws.

Finally, the liability of any member of a committee of a limited partnership to the limited partnership, its partners and any third party, has been clarified in a new provision, Article 19(7) of the Law. This is consistent with other jurisdictions’ laws.

To enable this provision to maintain its alignment with other jurisdictions’ equivalent provisions, there has been added a power for it to be amended by Order. This will avoid the need for primary law changes, which take longer to implement.

- (t) Article 20 – amending Article 21 – Assignments

This provision has been tidied so that the reference to interest is altered to “*partnership interest*” to make it consistent with the rest of the Law.

- (u) Article 22 – amending Article 21A – Cancellation of registration of declaration and dissolution of limited partnership

The title of this provision has been amended under the Draft Law, so it is clear to users of the Law that it sets out the basis upon which a limited partnership is dissolved. The Draft Law entirely substitutes the provision under the Law and sets out the new statutory dissolution process explained earlier on, both for voluntary and involuntary dissolution of the limited partnership.

The Registrar’s unilateral power to cancel the registration of a limited partnership in continued default is discretionary under Article 21A(3) of the Law. This is to allow, where appropriate, for the Registrar to manage with the partners of a defaulting limited partnership’s some of the practical issues, which may have arisen due to general partner’s refusal to act, to allow for an orderly wind up rather than triggering its dissolution and requiring it to follow the reinstatement process.

It also enables a limited partnership to continue in another legal form under Jersey law as there are occasions when limited partnerships may wish to convert to ordinary partnerships. In these circumstances, Article 21A(5) of the Law provides that the cancellation of its registration does not dissolve the limited partnership. This is the only circumstance where cancellation of registration does not result in dissolution.

- (v) Article 23 - amending Article 22 – Application to reinstate dissolved limited partnership

This provision substitutes the previous Article 22 – Statement of Dissolution. It sets out the process for reinstatement of a dissolved limited partnership. It allows for partners, creditors, or other interested parties to bring the application and gives the Court a wide discretion as to how it deals with the application. Finally, it ensures the order of the Court is made public by requiring it to be published by the Registrar and for the applicant to deliver the order to the Registrar. By this process the Registrar will reinstate the registration of the limited partnership so that it is deemed to have continued in existence, rather than a new registration be given to it. This is to provide certainty that the limited partnership is the same limited partnership as existed before its removal from the register and not a new one.

- (w) Article 24 – amending Article 23 – Winding up of limited partnership

The Draft Law substitutes in its entirety the previous Article 23 of the Law. The new provision allows, in addition to the general partner, for a liquidator to be appointed to carry out the winding up of the limited partnership. This can be authorised by the general partner, the Law or the partnership agreement. This reflects an enhancement requested by industry and is aligned to other jurisdictions' laws. Otherwise, as under the original Law, winding up is effected by the Court process.

To enable the new termination process to be triggered under Article 21A of the Law, there is a new requirement to file a request for cancellation of the registration on completion of the winding up. If this is not done the general partner commits an offence and is liable to a statutory fine.

This provision further clarifies that the limited partnership is not dissolved by an act of the partners other than under the statutory provisions. This is to ensure the customary law position is clearly ousted by the Law for the purposes of Article 40 of the Law.

- (x) Article 25 – amending Article 24 – Winding up of limited partnership on death etc, of general partner

The title of this provision has been altered to reflect the new order for termination of a limited partnership with winding up being triggered rather than dissolution of the limited partnership upon the general partner ceasing to be able to act under this provision. The terms of the provision have been altered accordingly, including the obligation to notify the Registrar, now done by filing a request to cancel the registration of the limited partnership upon completion of the winding up, rather than on dissolution. There is a statutory penalty imposed if this is not complied with. While there is no reporting obligation for the limited partnership to advise the Registrar when the limited partnership commences wind up, reporting of changes to the general partner under Article 5 of the Law should provide the Registrar with adequate notice of this event.

- (y) Article 26 – amending Article 25 – Power of the Court to order winding up

As in Article 24 the title of this Article has been amended to reflect the new order for termination of a limited partnership. The terms of the provision have also been altered accordingly.

In addition, a new provision, Article 25(1A) of the Law has been included which gives the Registrar a right to apply to the Court for a limited partnership to be wound up if its activities are bringing the Island into disrepute. This strengthens the enforcement powers of the Registrar where the underlying activities of the limited partnership, even if compliant with its statutory obligations, offend public policy. This provision would cater, for example, if Jersey wishing to wind up any limited partnerships or fund structured through a limited partnership where the fund was engaged in activities directly or indirectly connected with the Russian – Ukraine dispute. It is an extraordinary power and would be subject to the Court’s review.

(z) Article 27 – amending Article 27 – Settling accounts on winding up

As in Articles 24 and 25 the title of this Article has been amended to reflect the new termination process of a limited partnerships and its terms altered accordingly.

(aa) Article 28 – amending Article 37A – Regulations

This provision has been amended to include additional changes which industry have identified as beneficial to be made by way of regulations. This includes the incorporation of a regulation making power to allow for the adoption of the continuance regulations which were passed by triennial regulations in 2020, and regulations to provide for statutory merger of limited partnerships and the introduction of cellular limited partnerships. By enabling these to be passed by regulation, work can commence on these projects as soon as the Draft Law is passed and will be quicker to bring into effect than if they were needed to be done by way of another amendment law. The level of scrutiny by States members will remain the same.

(bb) Article 29 – Citation and commencement

This provides the Draft Law will come into effect 7 days after its registration. This will take effect after it has received Privy Council approval.

4. New or increased criminal penalties under the Draft Law

The Draft Law imposes criminal penalties for defaults of its new filing obligations under Articles 5A, 23, 24 and 25 of the Law. The filing obligation under Articles 23, 24 and 25 simply replace the existing reporting obligations that existed under the Law for dissolution, and the criminal penalties remain at the same level, a level 2 fine. The new annual confirmation reporting obligation under Article 5A has been set at a level 3 fine with a further level 2 fine applying where it is continuing. This level of penalty was determined as appropriate following a penalty review of the Draft Law.

5. Financial and manpower implications

There are no financial or manpower issues that would arise for the States or the Registry from the adoption of the Draft Law.

6. Penalty review and European Convention on Human Rights Review

The Law Officers have confirmed the penalties included in the Draft Law are consistent with penalties imposed under other Jersey legislation. The Law Officers’ Department

has undertaken a Human Rights review of the Draft Law, which is appended to this Report. Following this review the Minister has signed a statement of compatibility. This is not, and should not be taken as, legal advice.

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

These Notes have been prepared in respect of the draft Limited Partnerships (Amendment No. 2) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (the “**Convention**”).

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

1. Article 5A of the draft Law requires that a general partner or its nominated person must deliver to the Registrar of Limited Partnerships (the “**Registrar**”) an annual confirmation on behalf of the limited partnership which must confirm certain information. This information includes “any other prescribed information”. The Minister may prescribe information by way of powers under Article 38 (Orders) of the Principal Law. It is envisaged that at some point in the not-too-distant future such information will be prescribed to include details of the beneficial ownership of a limited partnership that has been established under the Principal Law. The exact scope of such prescribed information remains subject to ongoing discussion/to be confirmed. The draft Law provides for criminal sanctions where such requirements are not adhered to.
2. Although such requirements to provide information about ultimate beneficial ownership are by no means new to Jersey law the compulsion to provide such information on pain of criminal sanction can nonetheless be considered to interfere with the rights that as individual has under Article 8(1) ECHR to respect for his or her private and family life. On this basis, the “any other prescribed information” provision of Article 5A should be viewed as potentially engaging Article 8(1) ECHR.
3. The compulsory obtaining, recording and disclosure of information about a person’s identity under and in accordance with the Principal Law would, however, be compatible with Article 8 ECHR because the rights afforded under Article 8(1) ECHR are what are deemed “qualified” rights, and any interference with such rights through the operation of the Principal Law is justified in accordance with the provisions of Article 8(2) ECHR.
4. The requirements of the Principal Law would necessarily be “in accordance with the law” in Jersey, being contained in primary legislation that is sufficiently precise and accessible. The potential for the Law's interference with any Article 8(1) rights would be necessary in a democratic society because there is a clear and pressing social need for that interference, namely in continuing to demonstrate the clear commitment Jersey has to meeting its international obligations and to leading in the formulation of and compliance with international standards in relation to financial services and the holding of accurate, verified and up-to-date information about those who ultimately beneficially own or control entities. The provisions of the Law are justifiable as being in the interests of the economic well-being of Jersey and for the prevention of crime both in Jersey and

around the world, since the requirements for regular confirmation of the identity of those who are ultimately behind each financial services entity in Jersey have as their objective the combat against money laundering, tax evasion, corruption and terrorist financing. Jersey, like all jurisdictions subject to the ECHR, has a wide margin of appreciation in this matter.

5. The sanctions for non-compliance with the Law's regulatory requirements may also interfere with a person's property rights protected by Article 1 of the First Protocol to the ECHR ("A1P1") in as much as A1P1 protects the peaceful enjoyment of a person's possessions and a possession may include a share or other economic stake in (or rights of voting or other influence over) a company or financial services entity (for example, a limited partnership).
6. If a limited partnership were to become subject to the new cancellation of registration powers that will be available to the Registrar where that limited partnership is in "continued default" (Article 21A(3)) this may deprive a limited partner or other legal or beneficial owner of the economic value of his or her possession.
7. The Law is nonetheless compatible with A1P1 because the deprivation of property is subject to conditions provided for by law and it is in the public interest that there be compliance with Jersey's statutory requirements in the economic imperative to combat financial crime, for which there needs to be effective sanctions where the law is broken.
8. The Law is compatible with A1P1 because A1P1 does not require a particular economic model to be followed and a fair balance has been struck in the Law between A1P1 rights and the important public interest objectives of accurate, verified and up-to-date information being held in respect of all entities.
9. In particular, in terms of potential deprivation of property, the Registrar is required to give 30 days' notice of the "continued default" to the general partner of the limited partnership before the Registrar is entitled to cancel the registration of the declaration of the limited partnership under Article 21A(3). (Following the cancellation of the registration the limited partnership will be dissolved.)
10. There are also rights of redress for a fair determination of whether or not the limited partnership should have had its registration cancelled by the Registrar for the continued default of the general partner. In order to address the adverse consequences of such actions on a limited partner etc, Article 22 (application to reinstate dissolved limited partnership) has been incorporated to allow for the limited partnership to be reinstated. This may also be used where a limited partnership has mistakenly been de-registered, but still has assets so needs to be reinstated. An application can be brought by a partner or creditor of the limited partnership or any other interested party to the Royal Court any time before the 10th anniversary of the limited partnership being de-registered. The effect of reinstatement is to treat the cancellation of registration and dissolution of the limited partnership as void and to allow for its original registration to be reinstated. This provision allows for a fair trial for a partner or creditor of the limited partnership or any other interested party to bring such an application.
11. Other protections for the benefit of limited partners etc include provisions whereby: (i) on dissolution following cancellation of registration under Article 21A(3) the liability of a limited partner will continue to be limited in the manner provided under the Principal Law (Article 21B); (ii) the defaulting general partner is made liable for the costs of reinstatement (Article 21B); and (iii) following dissolution of a limited partnership, the general partner's powers

are restricted only to allow for the exercise of rights, powers or authority in connection with the assets or liabilities of the limited partnership prior to its dissolution (Article 21C).

EXPLANATORY NOTE

This Law amends the Limited Partnerships (Jersey) Law 1994.

Article 1 provides that this Law amends the Limited Partnerships (Jersey) Law 1994 (the principal Law”).

Article 2 amends Article 1 of the principal Law to insert certain definitions in light of the changes made by this Law.

Article 3 amends Article 3 of the principal Law to clarify that a limited partnership may be formed for any legal purpose, whether or not for profit and that a body corporate, an unincorporated body or a partnership, whether in the name of the partnership or its general partner, may be a general partner or a limited partner.

Article 4 amends Article 4 of the principal Law which deals with registration of a declaration by removing the requirement for the declaration to state the term, if any, for which the limited partnership is to exist or, if for unlimited duration, a statement to that effect.

Article 5 substitutes Article 5(1) to provide that if during the continuance of a limited partnership any change is made or occurs in any of the particulars required to be stated under Article 4 (other than a change in respect of the registered office of the limited liability partnership), a statement signed by a general partner or a nominated person, specifying the nature of the change must be delivered to the registrar within 21 days after the change is made or occurs.

Article 6 inserts a new Article 5A into the principal Law which requires a general partnership to deliver to the registrar an annual confirmation stating that the general partner confirms on behalf of the limited partnership that the particulars stated in its declaration are correct.

Article 7 substitutes Article 7 of the principal Law so that the name of the limited partnership must end with the words “Limited Partnership” in full or either of the abbreviations “L.P. and LP” and may include the name of any general partner or limited partner or any derivation thereof but a limited partnership must not have a name which is calculated or likely to mislead. The registrar may refuse to register a declaration where the name to be registered in the registrar’s opinion is misleading or otherwise undesirable and the registrar may issue guidance in that regard.

Article 8 substitutes Article 8(5)(c) of the principal Law to provide that the records kept at the registered office of a limited partnership would subject to any term of the partnership agreement, and to any regulation made under Article 37A, be available for inspection and copying during business hours without charge at the request of a partner.

Article 9 substitutes Article 10 of the principal Law to provide that any contribution to be made or agreed to be made by a limited partner may be money in any currency, any other property or services.

Article 10 substitutes Article 11(1) of the principal Law to provide that a general partner in a 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 and except as otherwise provided for in the partnership agreement of the limited partnership and under the principal Law.

Article 11 amends Article 13(1) of the principal Law to provide for the rights of a limited partner to be subject to any term of the partnership agreement, and to any Regulations made under Article 37A. *Article 11* also substitutes Article 13(2) to provide

that a limited partner is not entitled to dissolve the limited partnership other than in accordance with Article 23(1)(b), 24(3) or 25(4). Article 13(3) is also substituted to provide that a limited partnership is not dissolved by the death, legal incapacity, bankruptcy, retirement or withdrawal from the limited partnership of a limited partner who is an individual, or in the case of any other limited partner, its winding up, insolvency, termination, dissolution, bankruptcy or withdrawal from the limited partnership.

Article 12 substitutes Article 14(3) and inserts Article 14(4) of the principal Law to provide that where, contrary to Article 14(1) and (2), a limited partner receives any payment representing a share of the profits of the limited partnership, such payment is repayable by the 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 limited partnership. Article 14(1) provides that subject to the Law and the partnership agreement, a limited partner has the right to a share of the profits of the limited partnership and Article 14(2) gives a limited partner the right to receive from the limited partnership the share of the profits stipulated for in the partnership agreement only if, at the time when the partnership agreement is made, the limited partnership is solvent.

Article 13 amends Article 15(3) of the principal Law, which provides for dealings by a limited partner with partnership, to delete a reference to “capital” in relation to contributions.

Article 14 inserts a new Article 16(3) of the principal Law, which provides that a partnership agreement may provide that a partner has no rights, to a return of contributions or to receive profits, or both.

Article 15 inserts new Article 16A into the principal Law, which allows a partnership agreement, to provide rights to a person who is not a partner and the manner in which such rights may be varied or extinguished (which if the partnership agreement does not provide otherwise, is only with the consent of the person) and provides that the person is entitled to enforce such rights even without being a party to the partnership agreement.

Article 16 amends Article 17 of the principal Law so that it applies in relation to a return of a limited partner’s contribution to discharge a debt or obligation of the limited partnership on winding up rather than on dissolution of the partnership. *Article 15* also amends Article 17 to clarify that the partnership may provide a period longer than the statutory period of 6 months within which a contribution received by a partner may be returned on winding up and to remove the limitation that the debt or obligation incurred during the period that the contribution represented an asset of the limited partnership.

Article 17 inserts new Article 17A of the principal Law which provides that if a partnership agreement provides that where a partner breaches the provisions of the partnership agreement, that partner may be subject to or suffer sanctions or consequences as a result of the breach as specified in the partnership agreement, then those sanctions or consequences are not unenforceable solely on the basis that they are penal in nature.

Article 18 substitutes Article 18 of the principal Law to provide that subject to any term of the partnership agreement, a limited partner is liable to the limited partnership for the difference, if any, between the amount of money or the value of other property or services contributed by the limited partner to the limited partnership and the amount of money or the value of other property or services specified in the records kept under Article 8(4) to be contributed by the limited partner to the limited partnership. The substituted Article 18 also provides that a general partner is liable for the debts and obligations of the limited partnership if the assets of the limited partnership are insufficient to discharge the debts and obligations of the limited partnership.

Article 19 amends Article 19 of the principal Law to make the liability of a limited partner for the debts or obligations of the limited partnership subject to the partnership agreement in addition to being subject to the Law. Paragraph (2) is substituted so that, except as provided in paragraph (3), a limited partner is not liable as a general partner. Paragraph (3) imposes liability in certain circumstances where the limited partner participates in the management of the limited partnership. Paragraph (4) is substituted to provide that a limited partner is liable under paragraph (3) only to a person who transacts with the limited partnership during the period of and with actual knowledge of the participation of the limited partner in the management of the limited partnership and who then reasonably believed, based upon the limited partner's conduct, the limited partner to be a general partner. Paragraph (5) also is substituted to provide the circumstances in which a limited partner does not participate in the management of a limited partner. A new paragraph (7) is inserted to provide that except as expressly provided in the partnership agreement or in the terms of their appointment, the members of any committee (whether or not they are limited partners in the limited partnership) owe no duty to the limited partnership, its partners, the other committee members or a third party. The Minister is given the power to amend paragraph (5) by Order to add, remove or vary any of the circumstances which do not constitute participation in the management of a limited partnership under this Article.

Article 20 amends Article 21 of the principal Law to change the references to "interest" to "partnership interest" in relation to the assignment of such rights.

Article 21 substitutes Article 21A of the principal Law so that provision is made for the cancellation of the registration of a declaration and dissolution of a limited partnership on delivery to the registrar of a request for its cancellation under Article 23(1)(b), 24(3) or 25(4). The registrar must also cancel the registration of the declaration of a limited partnership on delivery to the registrar of a request by a general partner for the cancellation of the registration upon the limited partnership's continuance in another legal form governed by the laws of Jersey which has been unanimously agreed by the partners and approved by the relevant authorities. The registrar may cancel the registration of the declaration of a limited partnership where the limited partnership is in continued default.

Substituted Article 21A also provides that the dissolution of a limited partnership takes effect upon the cancellation of registration of the declaration of the limited partnership being registered by the registrar and that the dissolution of a limited partnership does not affect its continuation in another legal form.

Article 22 inserts new Article 21B in the principal Law which provides for the liability of partners following dissolution on continued default. Where a limited partnership is dissolved following the exercise of the registrar's powers to cancel its registration under Article 21A(3), the liability of a limited partner continues to be limited in the manner provided for by the principal Law and the general partner is liable to the limited partners or any creditor of the limited partnership for the cost of reinstatement of the registration of the limited partnership without recourse to the assets of the limited partnership and remains liable for the debts and obligations of the limited partnership.

Article 22 also inserts new Article 21C into the principal Law which imposes limitations on the exercise of powers and rights by a general partner following dissolution. The exercise of the general partner's powers and rights is limited in so far as may be required in connection with the assets and liabilities of the limited partnership prior to its dissolution, to realise its assets, to discharge its liabilities, to distribute any surplus in accordance with the terms of the partnership agreement or the principal Law; to take all such other steps or actions in connection with the winding up of the limited partnership

or to apply to the Court under Article 22 for the reinstatement of the registration of the limited partnership.

Article 23 substitutes Article 22 of the principal Law to give the Court the power, on application made by a partner or creditor of a limited partnership, to make an order declaring the cancellation of registration of a declaration and dissolution of the limited partnership under Article 21A to be void. The Court must make the order before the expiry of 10 years after the date on which the cancellation of the registration takes effect. The person on whose application the order is made must within 14 days after the making of the order (or such further time as the Court may allow) deliver the relevant Act of Court to the registrar for registration and the registrar must reinstate the registration of the limited partnership.

Article 24 substitutes Article 23 of the principal Law to provide for the winding up of a limited partnership. Article 23(1) provides that where the winding up of a limited partnership commences under the principal Law or the partnership agreement and unless the activities of the limited partnership are taken over and continued in accordance with Article 24(2), the affairs of the limited partnership must be wound up by the general partners or by such other persons authorised under the principal Law or the partnership agreement to carry out the winding up, or as the Court otherwise orders under Article 24(1)(ii) and 25(1A). The general partner or the other persons authorised to wind up the limited partnership must, on completion of the winding up, file a request for the cancellation of its registration with the registrar. A limited partnership is not dissolved by an act of the partners other than in accordance with paragraph (1)(b), Article 24(3) or Article 25(4). A general partner who fails to comply with Article 23(1) commits an offence and is liable to a fine of level 2 on the standard scale.

Article 25 substitutes Article 24 of the principal Law to provide for the winding up of limited partnership on the death or dissolution of the sole or last remaining general partner of the limited partnership.

Article 26 amends Article 25 of the principal Law to give the Court the power to order the winding up of a limited partnership rather than the dissolution in the circumstances specified in Article 25(1). A new paragraph (1A) is inserted to give the Court the power, on the application of the registrar, to order the winding up of a limited partnership if satisfied that the activities of the limited partnership are bringing the reputation of Jersey into disrepute. Upon completion of a winding up under this Article, the person authorised by the Court to wind up the limited partnership must deliver a request for the cancellation of the registration of the limited partnership to the registrar. A person who fails to comply with paragraph (4) commits an offence and is liable to a fine of level 2 on the standard scale.

Article 27 amends Article 27 of the principal Law so that the provisions for the settling of accounts applies on winding up rather than on dissolution.

Article 28 amends Article 37A(1) of the principal Law to specify that Regulations may be made to provide for the continuance of limited partnerships, the merger of limited partnerships and the creation of partnership interests corresponding to separate portfolios of assets with segregated liability and for the merger or conversion of such segregated portfolios of assets. *Article 28* also inserts Article 37(6) to give the States the power by Regulations to make any consequential and transitional provisions and make amendments to the principal Law or any other enactment that appear necessary or expedient in connection with the coming into force of the Limited Partnership (Amendment No. 2) (Jersey) Law 202-.

Article 29 provides that the Law may be cited as the Limited Partnerships (Amendment No. 2) (Jersey) Law 202- and comes into force 7 days after it is registered.

Re-issue Note

This Projet has been re-issued to correct minor errors in the explanatory note.



Jersey

DRAFT LIMITED PARTNERSHIPS (AMENDMENT No. 2) (JERSEY) LAW 202-

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Jersey

DRAFT LIMITED PARTNERSHIPS (AMENDMENT No. 2) (JERSEY) LAW 202-

A LAW to amend the [Limited Partnerships \(Jersey\) Law 1994](#).

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

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

1 [Limited Partnerships \(Jersey\) Law 1994](#) amended

This Law amends the [Limited Partnerships \(Jersey\) Law 1994](#).

2 Article 1 (interpretation) amended

In Article 1 –

- (a) after the definition “Commission” there is inserted –
“ “continued default”, in relation to a limited partnership, means the general partner of the limited partnership defaulting on its duties under Articles 5, 5A, 8, 9(1) or 30A and the default continuing despite the registrar having given 30 days’ notice of the default to the general partner at the last known registered address of the limited partnership;”;
- (b) after the definition “declaration” there is inserted –
“ “delivery” includes delivery by electronic means;
“electronic” has the meaning given by Article 1 of the [Electronic Communications \(Jersey\) Law 2000](#);”;
- (c) after the definition “Minister” there is inserted –
“ “nominated person” means a person other than a general partner who is authorised by the general partner to fulfil certain legal obligations of the general partner in notifying and providing documents required under this Law, or the Regulations or an order made under this Law, to the registrar;”;

- (d) after the definition “registrar” there is inserted –
““relevant authorities” means the Commission, Revenue Jersey and such other person as may be prescribed.”.

3 Article 3 (limited partnership) amended

In Article 3 –

- (a) for paragraph (1) there is substituted –
“(1) Subject to the provisions of this Law, a limited partnership may be formed for any legal purpose, whether or not for profit.”;
- (b) for paragraph (3) there is substituted –
“(3) A body corporate, an unincorporated body or a partnership, whether in the name of the partnership or its general partner, may be a general partner or a limited partner.”.

4 Article 4 (registration of declaration) amended

In Article 4(3) sub-paragraph (d) is deleted.

5 Article 5 (amendment of declaration) amended

For Article 5(1) there is substituted for –

- “(1) If during the continuance of a limited partnership any change is made or occurs in any of the particulars required to be stated under Article 4 (other than a change in respect of the registered office of the limited partnership), a statement signed by a general partner, specifying the nature of the change must be delivered to the registrar within 21 days after the change is made or occurs.”.

6 Article 5A (annual confirmation) inserted

After Article 5 there is inserted –

“5A Annual confirmation

- (1) A general partner or that general partner’s nominated person must, within the relevant period deliver to the registrar an annual confirmation on behalf of the limited partnership stating –
 - (a) that the particulars required to be stated under Article 4(3) are correct;
 - (b) the limited partnership status as being continuing or in wind up;
 - (c) any other prescribed information.
- (2) If there is a failure to comply with paragraph (1) each of the general partners commits an offence and is liable to a fine of level 3 on the standard scale and where the offence continues they are each liable

to a further fine of level 2 on the standard scale for each subsequent day of the offence.

- (3) In this Article “relevant period” means –
- (a) the period between 1st January and the end of February in each year following the year in which the limited partnership is registered; or
 - (b) any other period that may be prescribed.”.

7 Article 7 (name of limited partnership) substituted

For Article 7 there is substituted –

“7 Name of limited partnership

- (1) The name of a limited partnership –
 - (a) must end with the words “Limited Partnership” in full or either of the abbreviations “L.P.” or “LP”; and
 - (b) may include the name or derivation of the name of any general partner or limited partner.
- (2) However a limited partnership must not have a name that is calculated or likely to mislead.
- (3) The registrar may refuse to register a declaration if the name to be registered is, in the registrar’s opinion, misleading or otherwise undesirable.
- (4) The registrar may issue guidance for the purpose of paragraph (3).”.

8 Article 8 (registered office) amended

In Article 8 for paragraph (5)(c) there is substituted –

- “(c) subject to the terms of the partnership agreement, and to any Regulations made under Article 37A, available for inspection and copying during ordinary business hours without charge at the request of a partner.”.

9 Article 10 (contribution of limited partner) substituted

For Article 10 there is substituted –

“10 Contribution of limited partner

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

10 Article 11 (rights and obligations of general partner) amended

In Article 11, for paragraph (1) there is substituted –

- “(1) A general partner in a 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, except as provided for in the partnership agreement and under this Law.”.

11 Article 13 (rights of limited partner) amended

In Article 13 –

- (a) in paragraph (1), for “A limited partner” there is substituted “Subject to the terms of the partnership agreement, and to any Regulations made under Article 37A, a limited partner”;

- (b) for paragraph (2) there is substituted –

“(2) A limited partner is not entitled to dissolve the limited partnership other than in accordance with Article 23(1)(b), 24(3) or 25(4).”;

- (c) for paragraph (3) there is substituted –

“(3) A limited partnership is not dissolved by the death, legal incapacity, bankruptcy, retirement or withdrawal from the limited partnership of a limited partner who is an individual, or in the case of any other limited partner, its winding up, insolvency, termination, dissolution, bankruptcy or withdrawal from the limited partnership.”.

12 Article 14 (share of profits) amended

In Article 14 –

- (a) for paragraph (3) there is substituted –

“(3) In circumstances where the requirements of paragraph (2) have not been met, paragraph (4) applies –

- (a) 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 limited partnership; or

- (b) a longer period as specified by the terms of the partnership agreement.”;

- (b) after paragraph (3) there is inserted –

“(4) Where this paragraph applies, the payment is repayable by that limited partner with interest at the prescribed rate to the extent that the share of the profits is necessary to discharge a debt or obligation of the limited partnership.”.

13 Article 15 (dealings by limited partner with partnership) amended

In Article 15(3) “capital” is deleted.

14 Article 16 (partners’ rights as between themselves) amended

In Article 16 –

- (a) in paragraph (1), after “paragraph (2)” there is inserted “and (3)”;

- (b) after paragraph (2) there is inserted –

“(3) A partnership agreement may provide that a partner has no rights to a return of contributions or to receive profits, or both.”.

15 Article 16A (third party rights) inserted

After Article 16, there is inserted –

“16A Third party rights

A partnership agreement may provide rights to a person who is not a partner and the manner in which those rights may be varied or extinguished (which unless the partnership agreement provides otherwise, is only with the consent of the person) and that person may enforce those rights even without being a party to the partnership agreement.”.

16 Article 17 (return of limited partner’s contributions) amended

In Article 17 –

- (a) in paragraph (1), for “on dissolution” there is substituted “during the limited partnership’s winding up”;
- (b) for paragraph (2), there is substituted –

“(2) For a period of 6 months from the date of receipt by a limited partner of any payment representing a return of the whole or part of the contribution received by such limited partner or such longer period as specified by the terms of the partnership agreement in circumstances where the requirements of paragraph (1) have not been met, such payment is 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 limited partnership.”.
- (c) in paragraph (3), for “a limited partner” there is substituted “, subject to the terms of the partnership agreement, a limited partner”;
- (d) in paragraph (4)(a), for “on the dissolution” there is substituted “immediately before the completion of the winding up”;
- (e) in paragraph (6) “capital” is deleted.

17 Article 17A (remedies against partner) inserted

After Article 17 there is inserted –

“17A Remedies against partner

If a partnership agreement provides that where a partner breaches the provisions of the partnership agreement, that partner may be subject to or suffer sanctions or consequences as a result of the breach as specified in the partnership agreement, then those sanctions or consequences are not unenforceable solely on the basis that they are penal in nature.”.

18 Article 18 (limited partner's liability to partnership) substituted

For Article 18 there is substituted –

“18 Partner's liability to partnership

- (1) Subject to the terms of the partnership agreement, a limited partner is liable to the limited partnership for the difference, if any, between the amount of money or the value of other property or services contributed by the limited partner to the limited partnership and the amount of money or the value of other property or services specified in the records kept under Article 8(4) to be contributed by the limited partner to the limited partnership.
- (2) A general partner is liable for the debts and obligations of the limited partnership if the assets of the limited partnership are insufficient to discharge the debts and obligations of the limited partnership.”.

19 Article 19 (limited partner's liability to creditors) amended

In Article 19 –

- (a) in paragraph (1), for “Except as provided in this Law” there is substituted “Except as expressly provided in the partnership agreement or in this Law”;
- (b) for paragraph (2) there is substituted –
“(2) Except as provided in paragraph (3), a limited partner is not liable as a general partner.”;
- (c) for paragraphs (4) and (5) there is substituted –
“(4) A limited partner is liable under paragraph (3) only to a person who transacts with the limited partnership during the period of, and with actual knowledge of, the participation of the limited partner in the management of the limited partnership and who then reasonably believed, based upon the limited partner's conduct, the limited partner to be a general partner.
(5) A limited partner does not participate in the management of a limited partnership within the meaning of this Article by doing one or more of the following –
 - (a) holding an office or interest in, or having a contractual relationship with, a general partner or being a contractor for or an agent or employee of the limited partnership or of a general partner or acting as a director, officer or shareholder of a corporate general partner;
 - (b) consulting with and advising a general partner (or any person appointed to manage or advise the limited partnership) or consenting or withholding or withdrawing consent to any action proposed, in the manner contemplated by the partnership agreement, with respect to the activities of the limited partnership, or discussing the prospects of the limited partnership business;

- (c) investigating, reviewing, approving, consulting with or being advised by a general partner or any person appointed to manage or advise the limited partnership as to the accounts or affairs of the limited partnership or exercising any right conferred by this Law, or reviewing or approving a valuation of the limited partnership's assets;
- (d) granting loans to, or acting as surety or guarantor, or providing any other form of security for the limited partnership or a general partner either generally or in respect of specific obligations;
- (e) approving or disapproving an amendment to, extension of, or waiver of a term of, the partnership agreement or associated documents;
- (f) voting on, otherwise signifying approval or disapproval of, withholding or withdrawing consent or exercising veto rights in respect of, inter alia, one or more of the following –
 - (i) the winding up and dissolution, or the appointment of a person to carry out the winding up and dissolution, of the limited partnership,
 - (ii) arranging for the winding up of the limited partnership under Article 24(1) or seeking the requisite consent of limited partners to continue the limited partnership under Article 24(2),
 - (iii) the acquisition, disposal, transfer, exchange, lease, pledge or hypothecation of, or creation of a security interest or other dealing in any asset or other property by or of, the limited partnership,
 - (iv) the creation, renewal, extension, variation, repayment or discharge of an obligation or debt by the limited partnership,
 - (v) a change in the nature of the activities, objectives or policies of the limited partnership,
 - (vi) the admission, removal or withdrawal of a general or a limited partner and the continuation of the limited partnership thereafter,
 - (vii) 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,
 - (viii) the indemnification of any partner or other person,
 - (ix) the disposal of all or part of the partnership business or the acquisition of another business by the limited partnership,
 - (x) the acquisition or disposal of a type of investment or a particular investment by the limited partnership,
 - (xi) the exercise of the limited partnership's rights in respect of an investment, or
 - (xii) the participation by a limited partner in a particular investment by the limited partnership;

- (g) bringing an action on behalf of the limited partnership under Article 28(3);
 - (h) being a partner in a partnership that itself is a general partner;
 - (i) delivering a declaration under Article 4(2) or an annual confirmation under Article 5A to the registrar;
 - (j) calling, requesting, attending or participating in any meeting of the partners;
 - (k) enforcing a right under the partnership agreement;
 - (l) entering into, or acting under, a contract with the other partners in the limited partnership;
 - (m) taking part in a decision regarding changes in the persons responsible for the day-to-day management of the limited partnership; or
 - (n) in respect of any board or committee (such as an advisory or investment committee) of the limited partnership, or established by, or as provided for in the partnership agreement in respect of, the general partners, the limited partners or the partners generally –
 - (i) appointing, removing, nominating, electing or otherwise participating in the selection of a representative of the limited partner or any other person to serve on that board or committee, or
 - (ii) acting as a member of that board or committee either directly or by or through any representative or other person, including giving advice in respect of, or consenting or refusing to consent to, any action proposed by the general partner on behalf of the limited partnership and exercising any powers or authorities or performing any obligations as a member of the board or committee in a manner contemplated by the partnership agreement.”;
- (d) after paragraph (6) there is inserted –
- “(7) Except as expressly provided in the partnership agreement or in the terms of their appointment, the members of a committee (whether or not they are limited partners in the limited partnership) owe no duty to the limited partnership, its partners, the other committee members or a third party.
- (8) The Minister may by Order amend paragraph (5) to add, remove or vary any of the circumstances which do not constitute participation in the management of a limited partnership under this Article.”.

20 Article 21 (assignments) amended

In Article 21(1), (2) and (3) for “interest” wherever it occurs there is substituted “partnership interest”.

21 Article 21A (cancellation of registration) substituted

For Article 21A there is substituted –

“21A Cancellation of registration of declaration and dissolution of limited partnership

- (1) The registrar must cancel the registration of the declaration of a limited partnership on the delivery to the registrar of a request for its cancellation under Article 23(1)(b), 24(3) or 25(4).
- (2) The registrar must cancel the registration of the declaration of a limited partnership on delivery to the registrar of a request by a general partner for the cancellation of the limited partnership upon its continuance in another legal form governed by the laws of Jersey that has been unanimously agreed by the partners and approved by the relevant authorities.
- (3) The registrar may cancel the registration of the declaration of a limited partnership where the limited partnership is in continued default.
- (4) The dissolution of a limited partnership takes effect upon the cancellation of registration of the declaration of the limited partnership being registered by the registrar.
- (5) However, the dissolution of a limited partnership under paragraph (4) does not affect its continuation in another legal form under paragraph (2).”.

22 Article 21B and 21C inserted

After Article 21A there is inserted –

“21B Liability of partners following dissolution by registrar on continued default

Where a limited partnership is dissolved following the exercise of the registrar’s powers to cancel its registration under Article 21A(3) –

- (a) the liability of a limited partner continues to be limited in the manner provided for by this Law; and
- (b) each general partner is liable to the limited partners or any creditor of the limited partnership for the cost of reinstatement of the registration of the limited partnership without recourse to the assets of the limited partnership and remains liable for the debts and obligations of the limited partnership as provided by this Law.

21C Limitation on exercise of powers and rights by general partner following dissolution

If, following the dissolution of a limited partnership under Article 21A(3), a general partner of the dissolved limited partnership is entitled under the

terms of the partnership agreement, with the consent of the limited partners or otherwise, to exercise any rights, powers or authority in connection with the assets or liabilities of the limited partnership before its dissolution, it must not exercise those rights, powers or authority except in so far as may be required by the limited partnership –

- (a) to realise its assets;
- (b) to discharge its liabilities;
- (c) to distribute any surplus in accordance with the terms of the partnership agreement or this Law;
- (d) to take all other steps or actions in connection with the winding up of the limited partnership; or
- (e) to apply to the Court under Article 22 for the reinstatement of the registration of the limited partnership.”.

23 Article 22 (statement of dissolution) substituted

For Article 22 there is substituted –

“22 Application to reinstate dissolved limited partnership

- (1) Where the registration of a declaration of a limited partnership has been cancelled and the limited partnership has been dissolved under Article 21A, on an application made by a partner or creditor of the limited partnership or by any other interested party, the Court may at any time before the expiry of 10 years after the date on which the cancellation of the registration takes effect, make an order declaring the cancellation of the registration and dissolution of the limited partnership void.
- (2) In making an order under paragraph (1), the Court may give the directions and make the provisions as it thinks fit, including requiring the registrar to publish a notice of the Court’s decision and the effect of that decision.
- (3) The person on whose application the order is made under paragraph (1) must within 14 days after the making of the order (or such further time as the Court may allow) deliver the relevant Act of Court to the registrar for registration and the registrar must reinstate the registration of the limited partnership.”.

24 Article 23 (winding up of limited partnership) substituted

For Article 23 there is substituted –

“23 Winding up of limited partnership

- (1) Where winding up of a limited partnership commences under this Law or the partnership agreement, and unless the activities of the limited partnership are taken over and continued in accordance with Article 24(2) –

- (a) the affairs of the limited partnership must be wound up –
 - (i) by the general partners or by other persons authorised under this Law or the partnership agreement to carry out the winding up, or
 - (ii) as the Court otherwise orders under Articles 24(1)(ii) and 25(1A); and
 - (b) the general partner or the other persons authorised to wind up the limited partnership must, on completion of the winding up, file a request for the cancellation of its registration with the registrar.
- (2) A limited partnership is not dissolved by an act of the partners other than in accordance with paragraph (1)(b), Article 24(3) or Article 25(4).
 - (3) A general partner who fails to comply with paragraph (1) commits an offence and is liable to a fine of level 2 on the standard scale.”.

25 Article 24 (dissolution of partnership on death etc. of general partner) substituted

For Article 24 there is substituted –

“24 Winding up of limited partnership on death etc. of general partner

- (1) Despite any term 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 limited partnership; or
 - (b) where the sole or last remaining general partner is not an individual, its dissolution, insolvency, termination, dissolution, bankruptcy or withdrawal from the limited partnership,
 must cause the commencement of the winding up of the limited partnership which must immediately be wound up –
 - (i) in accordance with the partnership agreement, or
 - (ii) on the application of a limited partner or a creditor of the limited partnership, in accordance with the directions of the Court.
- (2) A limited partnership is not required to be wound up under paragraph (1) if, within 90 days of the commencement of the winding up, the limited partners, either unanimously or as otherwise provided for in the partnership agreement, elect one or more general partners, in which event –
 - (a) the limited partnership’s winding up is not caused; and

- (b) the activities of the limited partnership may be taken over and continued as provided for in the partnership agreement or a subsequent agreement.
- (3) If a limited partnership's winding up is caused under paragraph (1), and the activities of the limited partnership are not taken over and continued under paragraph (2), a request to cancel its registration signed by a limited partner, or other person, authorised by agreement of the limited partners or in accordance with the terms of the partnership agreement (as appropriate), must, on completion of the winding up, be delivered by the person to the registrar.
- (4) If there is a failure to comply with this Article for the delivery of the request, the person responsible commits an offence and is liable to a fine of level 2 on the standard scale.”.

26 Article 25 (power of the Court to order dissolution) amended

In Article 25 –

- (a) in the Article heading for “dissolution” there is substituted “winding up”;
- (b) in paragraph (1) –
 - (i) for “dissolution” there is substituted “winding up”,
 - (ii) in sub-paragraph (c) for “dissolved” there is substituted “wound up”;
- (c) after paragraph (1) there is inserted the following paragraph –

“(1A) The Court may, on the application of the registrar, order the winding up of a limited partnership if satisfied that the activities of the limited partnership are bringing the reputation of Jersey into disrepute.”;
- (d) in paragraph (2) after “Where an order is made under paragraph (1)” there is inserted “or paragraph (1A)”;
- (e) in paragraph (3) for “When a limited partnership has been dissolved under this Article” there is substituted “Following an order for the winding up of a limited partnership under paragraph (1),”;
- (f) after paragraph (3) there is inserted –

“(4) Upon completion of a winding up under this Article, the person authorised by the Court to wind up the limited partnership must deliver a request for the cancellation of the registration of the limited partnership to the registrar.
- (5) A person who fails to comply with paragraph (4) commits an offence and is liable to a fine of level 2 on the standard scale.”.

27 Article 27 (settling accounts on dissolution) amended

In Article 27 –

- (a) in the Article heading for “dissolution” there is substituted “winding up”;
- (b) for “after the dissolution” there is substituted “during the winding up”.

28 Article 37A (Regulations) amended

In Article 37A –

- (a) in paragraph (1), after sub-paragraph (b) there is inserted –
 - “(c) provide for the continuance of limited partnerships;
 - (d) provide for the merger of limited partnerships; and
 - (e) provide for the creation of partnership interests corresponding to separate portfolios of assets with segregated liability and for the merger or conversion of those segregated portfolios of assets.”;
- (b) after paragraph (5), there is inserted –
 - “(6) The States may by Regulations –
 - (a) make any consequential and transitional provisions;
 - (b) make amendments to this Law or any other enactment, that appear necessary or expedient in connection with the coming into force of the Limited Partnership (Amendment No. 2) (Jersey) Law 202-.”.

29 Citation and commencement

This Law may be cited as the Limited Partnerships (Amendment No. 2) (Jersey) Law 202- and comes into force 7 days after it is registered.