

STATES OF JERSEY



DRAFT LIMITED LIABILITY PARTNERSHIPS (JERSEY) LAW 201-

Lodged au Greffe on 19th September 2016
by the Chief Minister

STATES GREFFE



Jersey

DRAFT LIMITED LIABILITY 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 Assistant Chief Minister has made the following statement –

In the view of the Assistant Chief Minister, the provisions of the Draft Limited Liability Partnerships (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator P.F.C. Ozouf**

Assistant Chief Minister

Dated: 15th September 2016

REPORT

Limited Liability Partnerships (“LLPs”) are partnerships governed by the terms of their partnership agreements. They have some of the benefits that are offered by companies, including separate legal personality and a form of limited liability. LLPs are flexible structures which can be used for a variety of purposes: for instance, by professionals, by small businesses and in financial services. They were innovative when introduced in Jersey in 1997. Since that date, LLPs have become commonplace across the world, albeit taking different forms.

After a previous consultation, the Limited Liability Partnerships (Jersey) Law 1997 (the “**1997 Law**”) was amended by the Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 2013 (the “**2013 Amendment**”). The 2013 Amendment did not incorporate all the changes that had been suggested by the LLP steering group. It was decided to initially remove the largest impediment to businesses setting up Limited Liability Partnerships (“LLPs”). The requirements for a £5 million bond were replaced with a requirement for solvency statements to be filed.

Work continued on a restatement of the 1997 Law and the [Limited Liability Partnerships \(Insolvent Partnerships\) \(Jersey\) Regulations 1998](#) (“the 1998 Regulations”). The results are the Draft Limited Liability Partnerships (Jersey) Law 201- (“the Draft Law”) and the Draft Limited Liability Partnerships (Dissolution and Winding Up, etc.) (Jersey) Regulations 201- (“the Draft Regulations”).

The aim of replacing the old framework with the Draft Law and the Draft Regulations is to make the Jersey LLP more competitive, so that it is used as a vehicle of choice for local and international businesses.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Notes on the Draft Limited Liability Partnerships (Jersey)
Law 201-**

Article 1, Protocol 1 ECHR (“A1,P1”)

1. Article 1, Protocol 1 of the ECHR provides that:
“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”
2. A1, P1 is engaged by the draft Law to the extent that there are some slight interferences with the freedom to peacefully enjoy possessions.
3. For example, under Article 12 of the draft Law, a partner of a former partner may be liable to return property to the limited liability partnership where the partnership has not made a specified solvency statement or made one without reasonable grounds for the opinion in the statement. Also, under Article 16, a partner’s freedom to assign, transfer or otherwise dispose of his or her interest is fettered by the terms of the partnership agreement.
4. A1, P1 is a qualified right, and as such there may be limitations on the right to the extent that there is a legitimate aim, the limitation is prescribed in law and the measures used are proportionate.
5. Taking first the question of whether there is a legitimate aim, A1, P1 permits a control of use in accordance with the general interest. The “general interest” may, and has been, interpreted widely to encompass many aims. The purposes of the limitations referred to above, i.e. to protect the interests of partners and creditors are legitimate purposes which justify the limitations.
6. The interferences are clearly prescribed in the draft Law and therefore that limb of the test is satisfied.
7. The final point to consider is proportionality. The limitations in the draft Law are standard provisions which do not present any difficulties. They are reasonable and proportionate to the aims which they purport to secure, and **therefore the draft Law can be said to be compatible with Article 1, Protocol 1 ECHR.**

Explanatory Note

The Limited Liability Partnerships (Jersey) Law 201- (the “Law”) replaces the Limited Liability Partnerships (Jersey) Law 1997. It provides for the establishment, dissolution and winding up of limited liability partnerships, for their registration and for connected purposes.

Part 1 of the Law comprises *Article 1*, which sets out definitions of the terms used in the Law.

Part 2 of the Law sets out the essential elements of a limited liability partnership.

By *Article 2(1)*, an association of persons may be registered as a limited liability partnership where those persons wish to carry on a business with a view of profit have agreed (with or without other terms) –

- (a) that the business will be carried on in the form of a limited liability partnership from the date it is registered under *Article 18(4)*;
- (b) that they shall each contribute capital or effort and skill to the business but only in a way that constitutes them as agents of the limited liability partnership but not of each other, in accordance with *Article 17* (see later);
- (c) that the profits of the business will be divided between them; and
- (d) that they will each have an interest in those profits and in the limited liability partnership property to the extent described in the partnership agreement, the Law and in Regulations made under *Article 38(1)(a)* (which will set out what happens upon dissolution of the limited liability partnership – “dissolution Regulations”).

By *Article 2(2)*, the registration of a limited liability partnership has the effect from the issue of the certificate under *Article 18(4)* and *Article 2(3)* provides that an association of persons satisfying the requirements set out in *Article 2(1)* is not an LLP until that certificate is issued. The registration does not cease to have effect except as provided for in dissolution Regulations or upon the cancellation of its registration under *Article 23*.

Article 2(4) provides that except as provided in dissolution Regulations a limited liability partnership is a legal person (but not a body corporate) and is distinct from the partners of whom it is for the time being composed. Any contract which binds the limited liability partnership is made only with that legal person and any change in the persons who are partners in the limited liability partnership will not affect the existence, rights or liabilities of that legal person. By *Article 2(5)*, a change in the partnership does not limit the circumstances in which a limited liability partnership is or may be dissolved, whether in accordance with the partnership agreement or otherwise. There is no restriction on the number of persons that may be partners in a limited liability partnership, or on who may be a partner in a limited liability partnership.

Article 2(6) provides that each partner in a limited liability partnership has, subject to this Law and to the partnership agreement, an interest in the profits of the limited liability partnership and, in accordance with Regulations made under *Article 38(1)(a)* and *38(2)(a)* (relating to the settling of accounts on winding up), in the limited liability partnership property.

Article 3 defines limited liability partnership property. It consists of all property (as defined in *Article 1*) brought into the limited liability partnership or created or

acquired by or on account of the limited liability partnership either in the course of its business or with its money. Limited liability partnership property is vested in the limited liability partnership or held by any person on its behalf and continues to be so vested, subject to the partnership agreement and except as provided in dissolution Regulations, notwithstanding any change in the partners.

Article 4 provides that a limited liability partnership is liable for any debt or loss for which, if the limited liability partnership were an ordinary partnership, the partners would otherwise be liable, either jointly or jointly and severally. The limited liability partnership property shall be available to meet any such liability.

Article 5(1) provides that a partner or former partner in a limited liability partnership will not be liable for any debt or loss of the limited liability partnership, including any debt of, or loss caused by the act of, another partner in, the limited liability partnership. However, a partner or former partner's liability for personal debts, or for losses caused by the partner or former partner to the limited liability partnership, is unaffected by paragraph (1). A partner or former partner will also be liable for any debt or loss of the limited liability partnership where any limited liability partnership property, including a share in the limited liability partnership profits, has been withdrawn by that partner (or former partner) other than in the ordinary course of the affairs of the limited liability partnership, or in any circumstances set out in dissolution Regulations, and will remain so liable even after the limited liability partnership's registration has been cancelled. Liability is limited to an amount equal to the value of the withdrawal by the partner or former partner less any amount previously recovered from the partner or former partner in respect of that withdrawal.

Article 6 requires the name of a limited liability partnership to end with the words "Limited Liability Partnership", although the abbreviation "LLP" or "L.L.P." may be used instead. The abbreviation may also be used by any other person, where it would be convenient to do so and not misleading, in any reference to a limited liability partnership in any document issued by any person. A limited liability partnership may change its name, but the change will not take effect until the registrar has issued a certificate in respect of it. The registrar may refuse to register a name that the registrar considers to be misleading or otherwise undesirable and may issue a direction to a limited liability partnership to change its name if the registrar considers it to be misleading or otherwise undesirable. A direction may be set aside or confirmed by the Court upon the application of the limited liability partnership. A change of name in no way affects any rights or obligations of the limited liability partnership nor renders defective any legal proceedings by or against it. A change of name certificate must be delivered to the Judicial Greffier where a limited liability partnership has its name inscribed in the Public Registry as being the holder of, or having an interest in, immovable property. A limited liability partnership must have its name, the number or any other identifying code assigned to it by the registrar and the words "registered as a limited liability partnership in Jersey" clearly stated on all its business letters, statements of account, invoices, order forms, notices and other official publications, and on negotiable instruments and any letters of credit signed on behalf of the limited liability partnership. No person may carry on a business under a name or title which includes the words "limited liability partnership" or any contraction of those words, unless the person is a limited liability partnership under the Law, or under a law of another jurisdiction.

Article 7 requires a limited liability partnership to have a registered office in Jersey and any change of address of the registered office only takes effect after the registrar has provided a certificate in respect of the change. *Article 7(6)* lists the documents that

the limited liability partnership must keep at its registered office. They must all be available, during the ordinary office hours of the limited liability partnership, for inspection and copying without charge to a partner or the secretary. The list of partners that is required to be kept must be amended within 28 days after any change in the particulars contained in it. The limited liability partnership must also send the registrar a copy of the list of partners and any other document listed, if requested to do so by the registrar.

Article 8 requires every limited liability partnership to appoint a secretary from the date it is registered. It may also appoint a deputy secretary to carry out a function of the secretary when, for any reason, the secretary is unable to carry out that function. By *Article 8(3)*, the secretary, or a deputy secretary as the case may be, must be either a company with a registered office in Jersey that is a partner in the limited liability partnership; an individual who is ordinarily resident in Jersey and a partner in the limited liability partnership; or a company or individual who is registered under Part 2 of the Financial Services (Jersey) Law 1998 to carry on trust company business that permits the provision by that individual of the services mentioned in Article 2(4)(e) of that Law.

By *Article 8(2)*, the duty to have a secretary under this Article shall cease only upon cancellation of a limited liability partnership's registration under Article 23 or in any circumstances described in dissolution Regulations concerning the secretary's appointment.

Article 9 sets out the duties of a limited liability partnership secretary in relation to the keeping of records of the limited liability partnership and permitting access to them for inspection by any partner of the limited liability partnership.

Article 10 requires a limited liability partnership to take reasonable precautions to prevent loss or destruction of the records it is required to keep, to prevent falsification of entries in them and to detect and correct inaccuracies in them. The secretary is required to take reasonable precautions to prevent loss or destruction of the records it is required to keep, to prevent the falsification of entries and to facilitate the detection and correction of inaccuracies in the records.

Article 10(2) requires each partner of a limited liability partnership to take reasonable steps to ensure that the limited liability partnership's records are prepared and kept properly and accurately and that, in particular, they contain entries of all sums of money received and expended by the limited liability partnership, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the limited liability partnership, including any interests held by the limited liability partnership in any other legal person or arrangement.

Article 10(5) describes the form in which the records may be kept and the precautions that must be taken in respect of their preparation and safekeeping. Article 10(4) provides that the duties in relation to the keeping of the records and the prevention of their loss or destruction or falsification extend to any former secretary until such time as the limited liability partnership documents are transferred to the newly appointed secretary.

Article 11 provides that, subject to the partnership agreement or any provision in Regulations providing for the auditing of limited liability partnerships, it is not necessary for a limited liability partnership to appoint an auditor or to have its accounts audited. By *Article 11(2)*, a limited liability partnership must keep accounting records and returns of the limited liability partnership that are sufficient to show and explain the limited liability partnership's transactions and be such as to disclose with reasonable accuracy at any time the financial position of the limited

liability partnership at that time. By *Article 11(3)*, a limited liability partnership whose accounting records are kept in Jersey may provide its secretary with those records at any time, but must so provide them within one month of the end of the limited liability partnership's accounting period. In the case of a limited liability partnership whose accounting records are kept outside Jersey, the limited liability partnership is required to provide its secretary with the accounting records at intervals of not more than 6 months, with a return with respect to the business dealt with in those accounting records in respect of the 6 month period ending no earlier than one month before the date of providing the return. *Article 11(6)* gives the Chief Minister power to make an Order prescribing the accounting records and returns that must be kept, their form and content and any other documents or information that must be kept with those records or returns. By *Article 11(7)*, the first accounting period of a limited liability partnership may be up to 18 months and thereafter the accounting period must be not more than 18 months beginning at the end of the period covered by the most recent accounts.

Article 12(1) defines "specified solvency statement". This is a statement made by the limited liability partnership in which it states its opinion, having regard to the prospects of the limited liability partnership and the intentions of the partners who control the management with respect to the management of the limited liability partnership's business, and the amount and character of the financial resources that will be available to the limited liability partnership, whether the limited liability partnership will be able to continue to carry on business and discharge its liabilities as they fall due, until the expiry of the period of 12 months immediately following the date of the specified solvency statement or until the limited liability partnership is dissolved (whichever occurs soonest). The limited liability partnership is treated as having made a specified solvency statement if one or more of its partners who control its management signs a statement described in *Article 12(1)* on behalf of the limited liability partnership.

A limited liability partnership is not obliged to make a specified solvency statement but if it does make one it must send a copy of it to its secretary within 28 days of making it. It is an offence for a limited liability partnership to permit a partner to withdraw any limited liability partnership property at any time when the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal. Also, where a partner or former partner withdraws any limited liability partnership property at any time when the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal, or has made a withdrawal at a time when the limited liability partnership has made a specified solvency statement without having reasonable grounds for the opinion made in the statement, the partner will be liable to return the property withdrawn to the limited liability partnership. Where the property withdrawn was otherwise than in cash and is no longer available to be returned, or where the limited liability partnership so requires, the partner will be obliged to pay to the limited liability partnership a sum equal to the value of the property at the date of repayment. If the partner or former partner is liable to pay cash to the limited liability partnership, the partner or former partner shall also be required to pay interest at a rate prescribed by the Chief Minister on the sum repaid. It is an offence for a limited liability partnership or one of its partners to make a specified solvency statement without having reasonable grounds for making that statement. *Article 12(8)* describes the limited circumstances when a partner's liability to repay under this Article may be extinguished and *Article 12(9)* makes it clear that where liability arises under *Article 12(5)*, there will be no liability under *Article 5* unless there are additional

circumstances surrounding the withdrawal, other than those in Article 12(5), that creates a liability under Article 5.

Part 3 of the Law describes the relationship of the partners in a limited liability partnership with one another and with third parties.

Article 13 provides that, subject to Parts 2, 4 and 5, the rights and duties of the partners in a limited liability partnership shall, as between themselves, be determined by the partnership agreement. However, nothing in the partnership agreement may deprive the partners of the benefit of the provisions in *Article 5* which limit the liability of the partners, although the partners may still, as amongst themselves, wholly or partly indemnify any of them or any former partner in respect of any debt or loss.

Article 14 permits a partner in a limited liability partnership (subject to any terms in the partnership agreement to the contrary) to enter into any transaction with the limited liability partnership, including lending money to, and borrowing money from, it.

Article 15 provides that additional partners are not to be admitted to a limited liability partnership except in accordance with the partnership agreement and, except as described in dissolution Regulations, a partner may only retire from a limited liability partnership in accordance with the partnership agreement.

By *Article 16* a partner in a limited liability partnership may not assign, transfer or otherwise dispose of the whole or part of the partner's partnership interest except in accordance with the partnership agreement. Under *Article 16(2)* changes may be made in the partnership interests in a limited liability partnership on the admission or retirement of a partner, on the death of a partner, or on a partner who is not an individual ceasing to exist.

Article 17 provides that a partner in a limited liability partnership is not an agent of the other partners in that limited liability partnership, but that every partner in a limited liability partnership is the agent of the limited liability partnership. Accordingly, the acts of a partner in the partner's capacity as a partner shall bind the limited liability partnership except where the partner is not acting as a partner or is acting without authority and the person with whom the partner is dealing knows or should reasonably know that to be the position. *Article 17(4)* provides that a partner is not to be taken as acting with authority unless the partner is acting in the ordinary course of the business of the limited liability partnership or with express authority conferred by or pursuant to the partnership agreement.

Part 4 of the Law describes the registration and dissolution processes that apply to a limited liability partnership.

Article 18 provides that an application for registration as a limited liability partnership must be in the form of a declaration, signed by a person authorized to sign by every person who is, on registration, to be a partner, and must be delivered to the registrar in such form as the registrar may reasonably require. *Article 18(2)* prescribes the content of the declaration and gives the Chief Minister power to prescribe other information that must be provided. *Article 18(3)* provides for the Chief Minister to prescribe other documentation that must be delivered with the declaration. Upon receipt of an application complying with the requirements of *Article 18*, and complying with the requirements in Articles 6 and 7 as to the name and address of the proposed limited liability partnership, the registrar must register the limited liability partnership and issue a certificate specifying the date on which registration of the limited liability partnership takes effect (which must be the date on which the certificate is issued) and the number or other identifying code of the limited liability partnership.

Article 19 requires the limited liability partnership within 28 days after any change in the information stated in the declaration, to send to the registrar a statement specifying the change. It is an offence for the limited liability partnership to fail to do so.

Article 20 requires the secretary to deliver an annual return to the registrar stating whether the secretary has received a copy of any specified solvency statement made on or after the 1st March of the previous year; and whether the limited liability partnership has indicated that it has provided all the accounting records it is required to provide to its secretary under *Article 11*. Exceptionally, a return is not required where the property of the limited liability partnership has been declared *en désastre* under Article 6 of the Bankruptcy (Désastre) (Jersey) Law 1990. The secretary must deliver to the registrar with the annual return any specified solvency statement that has been made on or after the 1st March of the previous year.

Article 21 provides that an error in the declaration, annual return or any statement delivered to the registrar pursuant to the Law, or any default in the delivery of any such document required to be delivered will not affect the validity of the registration of a limited liability partnership, and that a certificate issued under *Article 18(4)* is conclusive evidence as to the registration of a limited liability partnership.

Article 22 describes the registrar's procedures with regard to dissolution, the notices the registrar must serve on a limited liability partnership and publish, and the notice periods that must be observed, before it can dissolve the limited liability partnership. The circumstances in which a limited liability partnership may be dissolved include where the limited liability partnership is not carrying on business; does not have a registered office in Jersey; has failed to appoint a secretary in compliance with *Article 8*; has failed to send to its secretary any accounting record or annual return required to be sent under this Law; where its secretary has failed to deliver to the registrar any annual return in compliance with *Article 20* or where the limited liability partnership has failed to pay a fee required to be paid under the Law. *Article 22(9)* provides for the dissolution Regulations to set out other circumstances when the registrar must or may issue a certificate of dissolution or publish a notice in respect of the limited liability partnership. *Article 22(6)* enables the Court to make an order, in circumstances described in dissolution Regulations, on such terms as the Court thinks fit declaring the certificate of dissolution to be void. In making an order under this Article, the Court may give directions and make provisions in relation to the dissolved limited liability partnership, including directions and provisions placing the limited liability partnership and all other persons in the same position as nearly as may be as if the limited liability partnership had not been dissolved.

Article 23 requires the registrar to cancel the entry in the register relating to the limited liability partnership and issue a certificate of cancellation of registration where the registrar has been notified of the completion of the winding up of the limited liability partnership pursuant to dissolution Regulations or has been notified under Article 36(3) of the Bankruptcy (Désastre) (Jersey) Law 1990. The States may by Regulations provide for the cancellation of registration of a limited liability partnership in any other circumstances. On cancelling a limited liability partnership's registration the registrar must publish a notice of that fact. *Article 23(5)* enables the Court to make an order, in circumstances described in dissolution Regulations, on such terms as the Court thinks fit declaring the cancellation of registration to be void. In making an Order under this Article the Court may give such directions and make such provisions as seem just, including directions and provisions for placing the limited liability partnership and all other persons in the same position as nearly as may be as if the registration of the limited liability partnership had not been cancelled.

Part 5 of the Law contains miscellaneous and general provisions.

Article 24 provides that, except as provided in dissolution Regulations, legal proceedings by or against a limited liability partnership must be instituted by or against the limited liability partnership, and any judgment must be made in such proceedings in favour of or against the limited liability partnership. Also, a judgment may not be enforced against any limited liability partnership property unless such judgment has been made against the limited liability partnership. This, however, does not affect any right of a judgment creditor of a partner in a limited liability partnership to enforce against that partner's partnership interest and any sum due to the partner from the limited liability partnership by way of repayment of a loan. *Article 24(4)* makes provision for the other partners to prevent or stop enforcement against those assets by paying to the creditor whichever is the lesser of the amount for which enforcement is sought and an amount equal to the value of the first mentioned partner's partnership interest, together with any sum due to the partner from the limited liability partnership by way of repayment of a loan. (The value of the limited liability partnership property may be determined by the Court for these purposes.) *Article 24(6)* limits the execution to enforce a judgment obtained against a limited liability partnership so that it is only capable of being issued against and satisfied out of the limited liability partnership property as at the date of such execution (no account being taken of any changes in the partners composing the limited liability partnership prior to such date). *Article 24(7)* describes when a person may join or otherwise institute proceedings against a limited liability partnership.

Article 25 describes how service of documents may be effected under the Law and gives power to the Chief Minister to make provision by Order for service by other methods.

Article 26 provides that where a person who is required by the Law to sign, deliver or permit inspection or copying of any document fails to do so, a person who is aggrieved by the failure may apply to the Court for an order directing the first person to comply with the Law and enables the Court to make such order as it considers appropriate in the circumstances. This is in addition to any criminal sanctions for such failure.

Article 27(1) confirms that the registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991 is the registrar of limited liability partnerships. *Article 27(2)* requires the registrar to maintain a register of limited liability partnerships and record in it any declaration, return, statement or copy delivered to the registrar and the issue of any certificate by the registrar pursuant to the Law. *Article 27(3)* requires any certificate issued by the registrar under the Law to be signed by the registrar and sealed with the registrar's seal (if any) and permits the Commission to direct a seal or seals to be prepared for the authentication of documents required for or in connection with the registration of limited liability partnerships. By *Article 27(5)*, any functions of the registrar under the Law may, to the extent authorized by the registrar, be exercised by an officer on the staff of the Commission.

Article 27(6) and *(7)* give the registrar the power to remove from the register material of a description specified in the Regulations that derives from anything invalid or ineffective or that was done without the authority of the limited liability partnership or is inaccurate, or is derived from something that is inaccurate or forged. Before exercising this power the registrar must publish his or her policy as to who may make an application and what is to be included in the application, any notice to be given and any period allowed for the making of objections, how an application may be

determined and the appeal process that will apply where a person is aggrieved by the registrar's decision to remove material.

By *Article 28* the Commission may require the payment to it of an annual administration fee, and fees in respect of the performance by the registrar of his or her functions under the Law or a charge for the provision by the registrar of any service or assistance, or a document or information. By *Article 28(2)*, the States may make Regulations providing for an additional amount to be paid to the Commission. By *Article 28(9)* the Commission may publish forms and other documents to be used for any of the purposes of the Law together with details of the manner in which any such document to be delivered to the registrar is to be authenticated. By *Article 28(11)* a fee is payable if it has been published and is in effect in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998.

Article 29 requires the registrar to permit any person to inspect any document delivered to the registrar under the Law and kept by the registrar; and requires the registrar to provide any person with a certificate or a copy of any certificate issued by the registrar under the Law and of all or part of any other document kept by the registrar. By *Article 29(3)*, the registrar may publish details of the times during which, and the manner by which, a document may be inspected or issued under this Article.

Article 30 gives the Court the power to make an order in respect of the production and inspection of the records of a limited liability partnership for the purpose of the Attorney General investigating and obtaining evidence of an offence believed to have been committed by a person while that person was a partner or secretary in connection with the management of the limited liability partnership's affairs.

Article 31 permits the registrar to destroy any record or document relating to a limited liability partnership any time after 10 years from the date of cancellation of its registration.

Article 32 provides that where criminal proceedings are instituted against any person, nothing in this Law is to be taken to require any person to disclose any information which the person is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the court.

Under *Article 33* the Judicial Greffier must register in the Public Registry all Acts and orders affecting immovable property made under the Law.

Article 34(1) provides for it to be an offence for a person to make a statement in any document, material, evidence or information which is required to be delivered to the registrar under the Law that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact the omission of which makes the statement false or misleading. A person shall not be guilty of the offence if the person did not know that the statement was false or misleading and with the exercise of reasonable diligence could not have known that the statement was false or misleading.

Article 34(3) provides for it to be an offence for a person to carry on a business under a name or title which includes the words "limited liability partnership" or any contraction of those words, unless the person is registered as a limited liability partnership under this Law or otherwise established as a limited liability partnership in another jurisdiction.

Article 34(4) provides for it to be an offence for a person wilfully to take or use any name, title, addition or description implying that the person is a partner in a limited liability partnership when the person is not, or implying that the person is a partner in

a partnership which is not a limited liability partnership when the partnership is a limited liability partnership.

Article 35 sets out the circumstances when partners, directors and officers of a body corporate, a separate limited partnership or a limited liability partnership or other partnership with separate legal identity may be criminally liable where an offence under the Law is proved against such a body corporate or partnership.

Article 36 sets out the penalties that apply in relation to offences under the Law.

The maximum penalty for the following offences shall be a fine at level 3 on the standard scale –

Article 6(13): Failure by a limited liability partnership to comply with a direction of the registrar to change the name of the limited liability partnership as required under *Article 6(5)*; failure to deliver to the Judicial Greffier a certificate of change of name of the limited liability partnership as required by *Article 6(10)*; or failure by the limited liability partnership to have its name, registration number or other identifying code and the words “registered as a limited liability partnership in Jersey” on its correspondence and other public documents, as required by *Article 6(12)*;

Article 7(11): Failure by a limited liability partnership to keep records at its registered office, as required under *Article 7(6)*; failure to list the partners in alphabetical order where the limited liability partnership has more than 25 partners, as required by *Article 7(7)*; failure to make documents available for inspection or copying, as required under *Article 7(8)(b)*; failure to amend the list of partners within 28 days of any change, as required under *Article 7(9)*; and failure to send any copies of documents to the registrar as required by *Article 7(10)*;

Article 8(5): Failure by a limited liability partnership to appoint a secretary upon registration, or a new secretary upon a secretary’s appointment ceasing, as required by *Article 8(1) or (4)*;

Article 9(4): Failure by a limited liability partnership’s secretary to keep records in accordance with *Article 9(1)*, failure by the secretary to permit access to them by any partner in accordance with *Article 9(2)*; failure by the secretary to keep a copy of any document that the secretary sends to the registrar or Commission, as required by *Article 9(3)*;

Article 10(6): Failure by a limited liability partnership to take reasonable precautions to prevent loss or destruction or falsification of documents or facilitate detection and rectification of errors in documents, as required by *Article 10(1)*;

Article 10(7): Failure by a partner to keep records properly and accurately as required by *Article 10(2)*;

Article 10(8): Failure by a limited liability partnership’s secretary to take reasonable precautions to prevent loss or destruction or falsification of documents or facilitate detection and rectification of errors in documents as required by *Article 10(3)*;

Article 10(9): Failure by a limited liability partnership’s former secretary to retain all documents and to deliver them to the newly appointed secretary as required by *Article 10(4)*;

Article 11(5): Failure by a limited liability partnership to provide its secretary with accounting records or returns, required to be submitted under *Article 11(2)*, *11(3)* or *11(4)*;

Article 12(4): Limited liability partnership permitting withdrawal of partnership property when a specified solvency statement has not been made in the 12 months immediately preceding the withdrawal;

Article 19(3): Failure by a limited liability partnership to provide the registrar with a statement of change in information in a declaration within 28 days of the change, as required by *Article 19(1)*;

Article 20(4): Failure by a limited liability partnership's secretary to deliver the annual return to the registrar, as required by *Article 20(1)*; or to deliver any specified solvency statement, as required by *Article 20(3)*;

Article 23(7): Failure by a person who made an application to the Court to send the Court's Act to the registrar within 14 days, as required by *Article 23(6)*.

By *Article 36(2)*, the maximum penalty for the following offences shall be an unlimited fine and 2 years imprisonment –

Article 12(12): A limited liability partnership making a specified solvency statement without having reasonable grounds for having the opinion expressed in that statement;

Article 12(13): A partner signing a specified solvency statement without having reasonable grounds for having the opinion made in the statement;

Article 34(1), *34(3)* and *34(4)*: A person giving false or misleading information etc. to the registrar (see above paragraph on *Article 34*).

Article 37 limits the liability of the States, the Chief Minister, the Commission and the registrar for anything done or omitted in the discharge or purported discharge of their functions unless it is shown that the act or omission was in bad faith.

Article 38(1) gives power to the States to make Regulations in respect of the dissolution and winding up of solvent or insolvent limited liability partnerships, including the settling of accounts on winding up (referred to earlier in this explanatory note as "dissolution Regulations"); the recognition of proceedings in other jurisdictions; the preparation of accounts of limited liability partnerships; and the audit of limited liability partnerships.

Article 38(6) gives the States power to amend Articles 1, 6 to 12, 18 to 20, 22, 23, 25, and 27 to 29 and 31 by Regulations.

Article 38(7) gives the powers to the States to make amendments to any enactment, including any provision of the Schedule that is not in force, as appear to the States to be expedient in connection with the repeal of the Limited liability Partnership (Jersey) Law 1997 or the coming into force of this Law.

By *Article 38(8)* Regulations made under this Law may make any provision for the purpose of carrying this Law into effect and may provide for the Chief Minister or Commission to exercise a discretion in respect of matters provided for in the Regulations; make different provision for different cases and contain such incidental, supplemental, transitional, consequential and savings provisions as appear to the States to be necessary or expedient.

By *Article 38(8)(c)*, Regulations may create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine.

Article 39 gives the Chief Minister power to make an Order prescribing any matter which is to be prescribed under the Law. An Order may make different provision for different cases and contain such incidental, supplemental and transitional provisions as appear to the Chief Minister to be necessary or expedient. By *Article 38(3)* the Chief Minister must consult the Commission before making any Orders under the Law.

Article 40 provides that the power to make Rules of Court under the Royal Court (Jersey) Law 1948 includes a power to make Rules for the purposes of the Law.

Article 41 provides that nothing in the Law affects any duty arising in respect of partners that are subject to the rules or laws of Jersey in respect of their profession as a solicitor, advocate, accountant or other profession.

Article 42 provides that the rules of customary law applicable to a partnership apply to a limited liability partnership except in so far as they are inconsistent with the express provisions of the Law.

Article 43 introduces the Schedule of amendments and repeals.

Article 44 cites the Law as the Limited Liability Partnerships (Jersey) Law 201- and provides that it shall come into force on such day or days as the States may by Act appoint.

The Schedule sets out the amendments of other enactments consequential upon the making of the Law, and repeals the Limited Liability Partnerships (Jersey) Law 1997.

Under the Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016 (not yet in force – see the Draft Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016 (Appointed Day) Act 201- (P.75/2016), which, it is expected, will be debated on 13th September 2016) the maximum amount of fine within the jurisdiction of the Magistrate’s Court £10,000. Level 1 on the standard scale of fines is 2% of that jurisdiction (£200); level 2 is 10% of that jurisdiction (£1,000); and level 3 of that jurisdiction is 100% of that jurisdiction (£10,000).



Jersey

DRAFT LIMITED LIABILITY PARTNERSHIPS (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT LIMITED LIABILITY PARTNERSHIPS (JERSEY) LAW 201-

A LAW to make provision for the establishment, dissolution and winding up of limited liability partnerships, for their registration 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

(1) In this Law, unless the context otherwise requires –

“annual return” shall be construed in accordance with Article 20;

“Commission” means the Jersey Financial Services Commission established under the Financial Services Commission (Jersey) Law 1998¹;

“Court” means the Royal Court;

“debt” includes obligation;

“declaration” means a declaration made under Article 18;

“limited liability partnership” shall be construed in accordance with Article 2;

“limited liability partnership property” shall be construed in accordance with Article 3(1);

“loss” includes damage and injury;

“partner” means, in relation to a limited liability partnership, any person who is a partner in that partnership;

“partnership agreement” means any agreement of the partners as to the affairs of a limited liability partnership and the rights and obligations of the partners among themselves;

“partnership interest” means, in relation to a partner in a limited liability partnership, the partner’s share of the profits and losses of the limited liability partnership and the partner’s right to receive distributions of the limited liability partnership property, including any sum due to the partner and for the time being retained in the limited liability partnership otherwise than by way of a loan, together with any other benefit conferred by the partnership agreement other than any liability of the limited liability partnership to the partner by way of loan;

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

“property” means –

- (a) land, money, goods, things in action, goodwill, and every valuable thing, whether movable or immovable, and whether situated in Jersey or elsewhere; or
- (b) obligations, servitudes, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incidental to property;

“register” means the register maintained pursuant to Article 27(2);

“registrar” shall be construed in accordance with Article 27(1);

“retirement” means any act or occurrence whereby a person ceases to be a partner in a limited liability partnership other than by, where the person is an individual, the person’s death or, where the person is not an individual, its ceasing to exist;

“secretary” means the secretary appointed in accordance with Article 8 and any reference to a secretary in this Law or in any Regulations or Order made under this Law includes a person carrying out any of the functions of the secretary;

“specified solvency statement” has the meaning given to it by Article 12.

- (2) For the purposes of this Law, any reference to a loan includes any payment of interest on the loan which has fallen due.
- (3) In this Law, any requirement to give the name and address of any person shall be construed as a requirement to give –
 - (a) where the person is an individual, the person’s full name and an address for service in Jersey;
 - (b) where the person is a body corporate, its full name, the place where it is incorporated and its registered office;
 - (c) where the person is a limited liability partnership, its name, as it appears in its declaration, and its registered office; and
 - (d) in any other case the person’s full name and registered office or, if it has no registered office, the person’s principal place of business.
- (4) Any reference to a form, document or notice being published by the Commission or the registrar, as the case may be, shall be construed as being a reference to that form, document or notice being published in a

manner that is likely to bring it to the attention of any person affected by it.

PART 2

ESSENTIALS OF A LIMITED LIABILITY PARTNERSHIP

2 Limited liability partnership

- (1) An association of persons may be registered as a limited liability partnership where those persons wish to carry on a business with a view of profit and have agreed (with or without other terms) –
 - (a) that the business shall be carried on in the form of a limited liability partnership from the date it is registered under Article 18(4);
 - (b) that they shall each contribute capital or effort and skill to the business but only in a way that constitutes them as agents of the limited liability partnership but not of each other, in accordance with Article 17;
 - (c) that the profits of the business shall be divided between them; and
 - (d) that they shall each have an interest in the limited liability partnership property to the extent described in paragraph (6).
- (2) Registration of a limited liability partnership shall have effect from the issue of the certificate under Article 18(4) and, except as provided in Regulations made under Article 38(1)(a), the registration shall cease to have effect upon its cancellation under Article 23.
- (3) An association of persons satisfying the requirements of paragraph (1) shall not be a limited liability partnership until the registrar has issued a certificate under Article 18(4).
- (4) Except as provided in Regulations made under Article 38(1)(a), a limited liability partnership is a legal person (other than a body corporate) distinct from the partners of whom it is for the time being composed and accordingly (but without limitation) –
 - (a) any contract which binds the limited liability partnership is made only with that legal person; and
 - (b) any change in the persons who are partners in the limited liability partnership for the time being shall not affect the existence, rights or liabilities of that legal person.
- (5) Paragraph (4)(b) shall not be construed as limiting the circumstances in which a limited liability partnership is or may be dissolved, whether in accordance with the partnership agreement or otherwise.
- (6) Notwithstanding paragraph (4), each partner in a limited liability partnership has, subject to this Law and the partnership agreement, an interest in the profits of the limited liability partnership and, in accordance with Regulations made under Article 38(1)(a), in the limited liability partnership property.

- (7) Any person may be a partner in a limited liability partnership.
- (8) Any number of persons may be partners in a limited liability partnership.

3 Limited liability partnership property

- (1) Limited liability partnership property consists of all property –
 - (a) brought into the limited liability partnership; or
 - (b) created or acquired by or acquired on account of the limited liability partnership either in the course of its business or with its money.
- (2) Limited liability partnership property –
 - (a) shall be vested in the limited liability partnership or held by any person on its behalf; and
 - (b) subject to the partnership agreement, and except as provided in Regulations made under Article 38(1)(a), shall continue to be so vested or held notwithstanding any change in the persons who are partners in the limited liability partnership for the time being.

4 Liability of a limited liability partnership

- (1) A limited liability partnership shall be liable for any debt or loss for which, if the limited liability partnership were an ordinary partnership, the partners would otherwise be liable, either jointly or jointly and severally.
- (2) There shall be available to meet any liability of a limited liability partnership its limited liability partnership property.

5 Liability of a partner or former partner in a limited liability partnership

- (1) Subject to paragraphs (2) and (3), a partner or former partner in a limited liability partnership shall not be liable for any debt or loss to which Article 4(1) applies, including any debt of, or loss caused by the act of, another partner in the limited liability partnership.
- (2) Paragraph (1) shall not affect any liability of a partner or former partner in a limited liability partnership for –
 - (a) the partner's or former partner's personal debts; or
 - (b) any loss caused by the partner or former partner for which that partner or former partner is personally liable.
- (3) A partner or former partner shall be liable for any debt or loss to which Article 4(1) applies where any limited liability partnership property (which, for the purposes of this Article, includes any undistributed share in the limited liability partnership profits) is withdrawn by that partner other than in the ordinary course of the affairs of the limited liability partnership, or in any circumstances specified in Regulations made under Article 38(1)(a).

- (4) Subject to Article 12(9), the liability under paragraph (3) shall be limited to an amount equal to the value of the withdrawal by the partner or former partner less any amount previously recovered from the partner or former partner in respect of that withdrawal, and in a case where the withdrawal was made in the circumstances described in Article 12(5), the aggregate amount recoverable from the partner or former partner under –
 - (a) this Article; and
 - (b) Article 12 or Regulations made under Article 38(1)(a),shall not exceed the maximum amount that the partner is liable to return to the partnership property (less any amount that has been previously recovered) under Article 12(6) or under Regulations made under Article 38(1)(a), whichever amount is the higher.
- (5) This Article shall continue to apply, after the limited liability partnership's registration has been cancelled in accordance with Article 23, to a person who was a partner or former partner in a limited liability partnership.

6 Name of limited liability partnership

- (1) Subject to paragraph (2), the name of a limited liability partnership shall end with the words "Limited Liability Partnership".
- (2) The abbreviation "LLP" or "L.L.P." in place of the words "Limited Liability Partnership" may be used –
 - (a) by a limited liability partnership in its name; and
 - (b) where it would be convenient to do so and not misleading, in any reference to a limited liability partnership in any document issued by any person.
- (3) Where the name to be registered in respect of a limited liability partnership is, in the opinion of the registrar, in any way misleading or otherwise undesirable, the registrar may –
 - (a) where the name is stated in the declaration, refuse to register the limited liability partnership and issue a certificate pursuant to Article 18(4);
 - (b) where the name is specified in a statement delivered pursuant to Article 19(1), refuse to register the name and issue a certificate in respect of it pursuant to Article 19(2).
- (4) If, in the opinion of the registrar, the name by which a limited liability partnership has been registered is misleading or otherwise undesirable, the registrar may direct the limited liability partnership to change it.
- (5) Subject to paragraph (6), the limited liability partnership shall comply with a direction under paragraph (4) within 3 months from the date of the direction or such longer period as the registrar may allow.
- (6) The limited liability partnership may, within 21 days from the date of a direction under paragraph (4), apply to the Court to set it aside and, if such application is made, the Court may set the direction aside or confirm it.

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- (7) If the Court confirms the direction, the Court –
 - (a) shall specify a period, not being less than 28 days from the date the Court confirmed it, within which the limited liability partnership shall comply with the direction; and
 - (b) may order the registrar to pay the limited liability partnership such sum (if any) as it thinks fit in respect of the expenses to be incurred by the limited liability partnership in complying with the direction where the Court is of the opinion that the registrar has acted negligently or in bad faith in respect of the name that was registered prior to the making of the direction.
 - (8) A change of name of a limited liability partnership shall take effect upon a certificate in respect of it being issued by the registrar pursuant to Article 19(2).
 - (9) A change of name of a limited liability partnership does not affect any rights or obligations of the limited liability partnership or render defective any legal proceedings by or against it and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.
 - (10) Where a limited liability partnership which has its name inscribed in the Public Registry as being the holder of, or having an interest in, immovable property changes its name, the limited liability partnership shall deliver to the Judicial Greffier a copy of the certificate issued by the registrar pursuant to Article 19(2) within 14 days after it is issued.
 - (11) Upon delivery of the copy referred to in paragraph (10), the Judicial Greffier shall cause the new name to be registered in the Public Registry.
 - (12) A limited liability partnership shall have clearly stated on all its business letters, statements of account, invoices, order forms, notices and other official publications, and on negotiable instruments and any letters of credit signed on behalf of the limited liability partnership –
 - (a) its name;
 - (b) any number or other identifying code assigned to it by the registrar; and
 - (c) the words “registered as a limited liability partnership in Jersey”.
 - (13) A limited liability partnership that fails to comply with paragraph (5), (10) or (12) shall be guilty of an offence.

7 Registered office

- (1) A limited liability partnership shall have a registered office in Jersey.
- (2) A limited liability partnership does not comply with paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being that use for that purpose.
- (3) Where the registrar is not satisfied that the occupier of the premises that are to be the registered office of the limited liability partnership authorizes the premises to be used as its registered office, the registrar may –

-
- (a) where the address of the premises is stated as the address of the registered office in a declaration delivered pursuant to Article 18(1), refuse to register the limited liability partnership; and
 - (b) where the address of the premises is specified as the address of the registered office in a statement delivered pursuant to Article 19(1), refuse to register the address and issue a certificate in respect of it pursuant to Article 19(2).
 - (4) A change of the address of the registered office of a limited liability partnership shall take effect upon the registrar issuing a certificate in respect of it under Article 19(2).
 - (5) Where the change of address of the registered office of a limited liability partnership is to take effect before the expiry of the period of 14 days beginning on the day on which the statement in respect of it is delivered to the registrar under Article 19(1), a person may validly serve any document on the limited liability partnership or on any of its partners, within that period, at the limited liability partnership's previous registered office.
 - (6) A limited liability partnership shall keep at its registered office the following records –
 - (a) a document containing the name and address of the current secretary and a list showing the name and address of each partner;
 - (b) a copy of the declaration;
 - (c) a copy of the most recent annual return;
 - (d) a copy of any specified solvency statement made within the previous 12 months;
 - (e) a copy of any other statement delivered to the registrar under this Law; and
 - (f) a copy of any certificate issued by the registrar under this Law.
 - (7) In the case where the limited liability partnership has 25 or more members, the list of names referred to in paragraph 6(a) must be placed in alphabetical order.
 - (8) The documents kept under paragraph (6) shall be –
 - (a) *prima facie* evidence of the information which is by that paragraph directed to be contained in them;
 - (b) available for inspection and copying without charge at the limited liability partnership's registered office, during the ordinary business hours of the limited liability partnership, at the request of a partner or the secretary.
 - (9) The limited liability partnership shall amend the list kept under paragraph (6)(a) within 28 days after any change in the particulars contained in it.
 - (10) A limited liability partnership shall send to the registrar copies of any of the documents kept under paragraph (6) within 14 days of the registrar requesting any such documents.

- (11) A limited liability partnership that fails to comply with the requirements of paragraph (6), (7), (8)(b), (9) or (10) shall be guilty of an offence.

8 Limited liability partnership secretary

- (1) Every limited liability partnership, from the date it is registered –
- (a) must appoint a secretary; and
 - (b) may appoint a deputy secretary, in accordance with paragraph (3), to carry out the secretary's function when, for any reason the secretary is unable to carry out that function.
- (2) The duty to have a secretary shall cease only upon cancellation of a limited liability partnership's registration under Article 23 or in any circumstances described in Regulations made under Article 38(1)(a) concerning the secretary's appointment.
- (3) The secretary or a deputy secretary must be –
- (a) a company that is –
 - (i) a partner in the limited liability partnership and has a registered office in Jersey, or
 - (ii) registered under Part 2 of the Financial Services (Jersey) Law 1998² to carry on trust company business that permits the provision by that company of the services mentioned in Article 2(4)(e) of that Law; or
 - (b) an individual who is –
 - (i) a partner in the limited liability partnership and ordinarily resident in Jersey, or
 - (ii) registered under Part 2 of the Financial Services (Jersey) Law 1998 to carry on trust company business that permits the provision by that individual of the services mentioned in Article 2(4)(e) of that Law.
- (4) In the event of a secretary's appointment ceasing, or the requirements in paragraph (3)(a) or (b) in relation to the secretary appointed ceasing to be satisfied, the limited liability partnership must appoint a new secretary no later than 28 days after that cessation.
- (5) A limited liability partnership that fails to comply with the requirements in paragraphs (1) or (4) shall be guilty of an offence.

9 Records to be held by limited liability partnership secretary

- (1) Except as provided in Regulations made under Article 38(1)(a), the secretary shall keep for 10 years at a place in Jersey all the accounting records and returns of the limited liability partnership that are provided to the secretary by the limited liability partnership under this Law.
- (2) The secretary shall permit any partner of the limited liability partnership to inspect any accounting record or return provided to the secretary (including any specified solvency statement, return provided under Article 11(3) or annual return) of the limited liability partnership at any time during normal business hours.

- (3) If the secretary sends any document to the registrar or the Commission in accordance with a requirement in this Law, the secretary shall keep a copy of it, and the duty in paragraph (1) applies to any copies of documents retained under this paragraph.
- (4) A secretary who fails to comply with paragraph (1), (2) or (3) shall be guilty of an offence.

10 Keeping and form of limited liability partnership records

- (1) A limited liability partnership must take reasonable precautions –
 - (a) to prevent loss or destruction of;
 - (b) to prevent falsification of entries in; and
 - (c) to detect and correct inaccuracies in,the records it is required to keep by Article 7(6), or provide to its secretary by Article 11(3), 11(4) or 12(3).
- (2) Each partner of a limited liability partnership shall take reasonable steps to ensure that the limited liability partnership's records are prepared and kept properly and accurately and that, in particular, they contain entries of all sums of money received and expended by the limited liability partnership, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the limited liability partnership, including any interests held by the limited liability partnership in any other legal person or arrangement.
- (3) A secretary must 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 the secretary is required to keep by Article 9(1) and 9(3).
- (4) A person who ceases being the secretary of a limited liability partnership in accordance with Article 8(2) must –
 - (a) retain all the documents of the limited liability partnership kept by that person in accordance with Article 9 and take the reasonable precautions described in paragraph (3)(a) and (b) as if the person were still the secretary until such time as the person delivers those documents in accordance with sub-paragraph (b) to the new secretary appointed under Article 8(4), or such other person as may be specified in Regulations made under Article 38(1)(a); and
 - (b) deliver those documents to the new secretary appointed under Article 8(4) within 14 days of being notified of the name and address of the new secretary, or to such other person as may be specified in Regulations under Article 38(1)(a), within such period as may be specified in those Regulations.
- (5) The records referred to in paragraphs (1), (2) and (3) 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.

- (6) A limited liability partnership that fails to comply with the requirements of paragraph (1) shall be guilty of an offence.
- (7) A partner that fails to comply with the requirements of paragraph (2) shall be guilty of an offence.
- (8) A secretary that fails to comply with the requirements of paragraph (3) shall be guilty of an offence.
- (9) A person who fails to comply with the requirements of paragraph (4) shall be guilty of an offence.

11 Accounts and audit

- (1) Subject to the partnership agreement and any Regulations made under Article 38(1), it shall not be necessary for a limited liability partnership to appoint an auditor nor to have its accounts audited.
- (2) A limited liability partnership shall keep accounting records or returns of the limited liability partnership that are sufficient to show and explain the limited liability partnership's transactions and are such as to disclose with reasonable accuracy at any time the financial position of the limited liability partnership at that time.
- (3) A limited liability partnership whose accounting records are kept in Jersey –
 - (a) may provide its secretary with the accounting records of the limited liability partnership at any time; and
 - (b) shall provide its secretary, within one month of the end of the limited liability partnership's accounting period, with any accounting records of the limited liability partnership in respect of that accounting period that have not already been provided under sub-paragraph (a).
- (4) A limited liability partnership whose accounting records are kept outside Jersey shall provide its secretary, at intervals of not more than 6 months, with a return with respect to the business dealt with in those accounting records in respect of the 6 month period ending no earlier than one month before the date of providing the return.
- (5) A limited liability partnership that fails to provide to its secretary its accounting records or a return, as the case may be, as required under paragraph (2), (3) or (4) shall be guilty of an offence.
- (6) The Chief Minister may by Order prescribe –
 - (a) the accounting records and returns that must be provided under paragraph (3) or (4);
 - (b) the form and content of those records or returns;
 - (c) any other documents and information that must be provided with those records or returns.
- (7) A limited liability partnership's accounting period shall be –

- (a) not more than 18 months beginning on the day the limited liability partnership was registered; and
- (b) if the limited liability partnership had previously prepared accounts, not more than 18 months beginning at the end of the period covered by the most recent accounts.

12 Specified solvency statement

- (1) A “specified solvency statement” is a statement made by the limited liability partnership in which it states that, in its opinion, having regard to –
 - (a) the prospects of the limited liability partnership and the intentions of the partners who control the management of the limited liability partnership with respect to the management of its business; and
 - (b) the amount and character of the financial resources that will be available to the limited liability partnership,
the limited liability partnership will be able to –
 - (i) continue to carry on business; and
 - (ii) discharge its debts as they fall due,until the date which is the earlier of the expiry of the period of 12 months immediately following the date of the specified solvency statement and the dissolution of the limited liability partnership.
- (2) A limited liability partnership –
 - (a) may make a specified solvency statement at any time; and
 - (b) is treated as having made a specified solvency statement if a partner that controls, or a partner that is one of the partners within a group of partners that control, the management of the limited liability partnership signs a statement for or on behalf of the limited liability partnership that contains the opinion described in paragraph (1).
- (3) If a limited liability partnership makes a specified solvency statement it shall keep the original of it and send a copy of it, within 28 days of making it, to its secretary.
- (4) A limited liability partnership that permits a partner or former partner to withdraw any limited liability partnership property at any time when the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal shall be guilty of an offence.
- (5) Paragraph (6) applies where a partner or former partner withdraws any limited liability partnership property at any time when –
 - (a) the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal;
or
 - (b) the limited liability partnership has made a specified solvency statement without having reasonable grounds for the opinion given in that statement.

-
- (6) Where this paragraph applies the partner or former partner is liable –
- (a) to return the property to the limited liability partnership; or
 - (b) if the property withdrawn was otherwise than in cash and either –
 - (i) the property is no longer available to be returned, or
 - (ii) the limited liability partnership so requires,
- to pay to the limited liability partnership a sum equal to the higher of the value of the property as at the date the property was withdrawn and its value as at the date of payment for the property under this Article.
- (7) Where the partner or former partner is liable under paragraph (6) to pay cash to the limited liability partnership the partner or former partner shall also be liable to pay interest at the prescribed rate on the sum repaid.
- (8) The liability of a partner or former partner to return limited liability partnership property in accordance with paragraph (6), or interest under paragraph (7), shall be extinguished (but only up to the value of the withdrawal that would have been permitted in the ordinary course of the affairs of the limited liability partnership) where the Court, upon the application of the partner or former partner, declares that it is satisfied that –
- (a) at the time of the withdrawal the limited liability partnership was solvent;
 - (b) subsequent to the withdrawal the limited liability partnership made a specified solvency statement; and
 - (c) it would not be contrary to the interests of justice for the partner or former partner to be released from that partner's or former partner's liability under paragraph (6).
- (9) Where limited liability partnership property is withdrawn in the circumstances described in paragraph (5), liability under Article 5(3) shall not arise unless such liability arises in respect of that withdrawal in circumstances other than those described in paragraph (5).
- (10) Nothing in this Article shall prevent a limited liability partnership from making a statement as to its solvency that is not a specified solvency statement, but such statement may not be treated as a specified solvency statement for the purpose of paragraph (4) or (5).
- (11) Regulations made under Article 38(1)(a) may make further provision for the return of any limited liability partnership property in circumstances described in paragraph (5).
- (12) A limited liability partnership that makes a specified solvency statement without having reasonable grounds for making that statement shall be guilty of an offence.
- (13) A partner that signs a specified solvency statement for or on behalf of a limited liability partnership without having reasonable grounds for making that statement shall be guilty of an offence.
- (14) For the purposes of this Article a reference to the withdrawal of limited liability partnership property includes the withdrawal of any undistributed share in the limited liability partnership's profits.

PART 3

RELATIONS OF PARTNERS IN A LIMITED LIABILITY PARTNERSHIP WITH ONE ANOTHER AND THIRD PARTIES

13 Relations of partners to one another

- (1) Subject to Parts 2, 4 and 5, the rights and duties of the partners in a limited liability partnership shall, as between themselves, be determined by the partnership agreement.
- (2) Nothing in the partnership agreement may deprive the partners of the benefit of Article 5(1).
- (3) Paragraph (2) shall not be construed as limiting the ability of the partners in a limited liability partnership, as between themselves, to wholly or partly indemnify any of them or any former partner in respect of any debt or loss.

14 Dealings by partners with limited liability partnership

Subject to any terms of the partnership agreement or any provision in this Law or Regulations made under Article 38 to the contrary, a partner in a limited liability partnership may enter into any transaction with the limited liability partnership, including lending money to, and borrowing money from, it.

15 Admission and retirement of partners

- (1) An additional partner shall not be admitted to a limited liability partnership except in accordance with the partnership agreement.
- (2) Except as provided in Regulations made under Article 38(1)(a), a partner may only retire from a limited liability partnership in accordance with the partnership agreement.

16 Assignments, etc.

- (1) A partner in a limited liability partnership may not assign, transfer or otherwise dispose of the whole or part of the partner's partnership interest, except in accordance with the partnership agreement.
- (2) Despite paragraph (1), changes may be made in the partnership interests in a limited liability partnership on the admission or retirement of a partner, on the death of a partner, or on a partner who is not an individual ceasing to exist.

17 Agency of partner in a limited liability partnership

- (1) Every partner in a limited liability partnership is the agent of that limited liability partnership and accordingly, but subject to paragraph (3), the acts of a person in the capacity of a partner shall bind the limited liability partnership.

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- (2) A partner in a limited liability partnership is not an agent of the other partners in that limited liability partnership.
 - (3) The acts of a partner in a limited liability partnership shall not bind the limited liability partnership where –
 - (a) the partner is not acting as a partner or is acting without authority; and
 - (b) the person with whom the partner is dealing knows or should reasonably know that paragraph (a) applies.
 - (4) A partner shall not be taken to be acting with authority unless the partner is acting –
 - (a) in the ordinary course of the business of the limited liability partnership; or
 - (b) with express authority conferred by or pursuant to the partnership agreement.
 - (5) For the purposes of paragraph (3), no person is deemed to have notice of any records by reason only that they are made available by the registrar for inspection.

PART 4

REGISTRATION AND DISSOLUTION OF A LIMITED LIABILITY PARTNERSHIP

18 Registration of limited liability partnership

- (1) An application for registration as a limited liability partnership shall be in the form of a declaration, made and signed by a person authorized to sign by every person who is, on registration, to be a partner, and shall be delivered to the registrar by such method or in such form as may reasonably be required by the registrar.
- (2) The declaration shall state –
 - (a) the proposed name of the limited liability partnership, such name to comply with Article 6(1) or 6(2);
 - (b) the intended address of the registered office of the limited liability partnership;
 - (c) the name and address of each person who is to be a partner in the limited liability partnership;
 - (d) the name and address of the proposed secretary and deputy secretary (if any) that it is proposed will be appointed under Article 8;
 - (e) the term, if any, for which the limited liability partnership is to exist or, if for unlimited duration, a statement to that effect;
 - (f) such other information as may be prescribed; and
 - (g) that the person making the declaration is authorized to do so by every person intending to be a partner on the proposed registration date.

- (3) The declaration shall be accompanied by such documents as may be prescribed.
- (4) Subject to Articles 6 and 7, if the registrar is satisfied that –
 - (a) the application complies with paragraphs (2) and (3); and
 - (b) the proposed registered office is in Jersey, as required by Article 7(1),the registrar shall register the limited liability partnership and issue a certificate of registration to the limited liability partnership.
- (5) The certificate issued under paragraph (4) shall specify –
 - (a) the date on which registration of the limited liability partnership takes effect, which shall be the date on which the certificate is issued; and
 - (b) any number or other identifying code allocated by the registrar to the limited liability partnership.

19 Amendment of declaration

- (1) Subject to paragraph (2), following the registration of a limited liability partnership under Article 18, the limited liability partnership shall send to the registrar within 28 days after any change in the information stated in the declaration a statement, signed by the secretary or other person authorized by the limited liability partnership, specifying the change.
- (2) Upon delivery of a statement pursuant to paragraph (1), if the registrar is satisfied that the change complies with the requirements of this Law, the registrar shall register the change specified in it and issue a certificate to the limited liability partnership recording the change.
- (3) A limited liability partnership that fails to send the statement referred to in paragraph (1) in accordance with that paragraph shall be guilty of an offence.

20 Annual return

- (1) Subject to paragraph (2), before the end of February in every year following the year in which a limited liability partnership is registered, the secretary shall deliver an annual return to the registrar stating –
 - (a) whether the secretary has received from the limited liability partnership any specified solvency statement, made on or after the 1st March of the previous year; and
 - (b) whether the limited liability partnership has provided to the secretary accounting records or any return under Article 11 and, if so, whether the limited liability partnership has indicated that it has provided all the records that it is required to provide under Article 11.
- (2) Paragraph (1) shall not apply in the case where a limited liability partnership is the subject of a declaration made under Article 6 of the Bankruptcy (Désastre) (Jersey) Law 1990³.

- (3) The secretary shall deliver to the registrar with the annual return a copy of any specified solvency statement the secretary has received from the limited liability partnership in accordance with Article 12(3) on or after the 1st March of the previous year.
- (4) A secretary that fails to comply with paragraph (1) or (3) shall be guilty of an offence.

21 Validity and proof of registration

- (1) No error in the declaration, the annual return delivered pursuant to Article 20 or any statement delivered to the registrar pursuant to this Law, nor any default in the delivery of an annual return, any such statement or any copy required to be delivered to the registrar under this Law shall affect the validity of the registration of a limited liability partnership.
- (2) Subject to Articles 27(6) and (7), a certificate issued under Article 18(4) is conclusive evidence as to the registration of a limited liability partnership.

22 Dissolution of limited liability partnership

- (1) If the registrar has reason to believe that a limited liability partnership is not carrying on business –
 - (a) the registrar may serve a notice on the limited liability partnership requiring it to advise the registrar whether or not it is carrying on business; and
 - (b) if the registrar receives an answer to the effect that the limited liability partnership is not carrying on business, or if the registrar does not, within one month after serving the notice, receive an answer, the registrar may publish and serve on the limited liability partnership a notice of intended dissolution under paragraph (3).
- (2) Where –
 - (a) the limited liability partnership has failed to appoint a secretary in compliance with Article 8;
 - (b) the limited liability partnership has failed to provide its secretary with any accounting record or annual return required to be provided to its secretary under this Law;
 - (c) the limited liability partnership's secretary has failed to send to the registrar any annual return or any specified solvency statement in compliance with Article 12;
 - (d) the limited liability partnership has failed to pay any fee, or any additional amount, required to be paid under Article 28; or
 - (e) the limited liability partnership does not have a registered office in Jersey, as required under Article 7(1),the registrar may serve on the limited liability partnership a notice of intended dissolution under paragraph (3).
- (3) A notice of intended dissolution shall state that at the end of the period of 3 months following the date of the notice, the registrar will issue a

certificate of dissolution in respect of the limited liability partnership unless –

- (a) where the notice relates to a failure to comply with a requirement referred to in paragraph (2)(a), (d) or (e) on the part of the limited liability partnership, the limited liability partnership has complied with that requirement;
 - (b) where the notice relates to a failure to comply with a requirement referred to in paragraph (2)(b) or (c) on the part of the limited liability partnership or its secretary, as the case may be, the limited liability partnership or its secretary has complied with the requirement in question to the satisfaction of the registrar in respect of every period in which that requirement was not previously met; or
 - (c) in any other case, the registrar is satisfied that there is sufficient reason shown by the limited liability partnership, a partner, secretary or creditor of the limited liability partnership, or any other interested party, why the limited liability partnership should not be dissolved.
- (4) If the conditions stated in the notice of intended dissolution in paragraph (3)(a), (b) or (c) (as the case may be) have not been satisfied before the end of the period of 3 months, the registrar may issue a certificate of dissolution of the limited liability partnership and if such certificate is issued, must –
- (a) serve the certificate on the limited liability partnership and secretary (if any);
 - (b) register the certificate; and
 - (c) publish a notice stating that such a certificate has been issued.
- (5) A certificate issued under paragraph (4) is conclusive evidence as to the dissolution of the limited liability partnership.
- (6) Despite paragraph (5), where a certificate has been issued under paragraph (4) or Regulations made under Article 38(1)(a) –
- (a) on an application made by –
 - (i) a person who was a partner immediately before the certificate was issued, or
 - (ii) any other person appearing to the Court to be interested; and
 - (b) in circumstances described in Regulations made under Article 38(1)(a),
- the Court may at any time before a certificate of cancellation is issued under Article 23(1), or when it makes an order declaring the cancellation of registration void under Article 23(5), make an order, on such terms as the Court thinks fit, declaring the certificate of dissolution void.
- (7) In making an order under paragraph (6) the Court may give such directions and make such provisions as seem to the Court to be just, including (but not limited to) directions and provisions –

- (a) with the aim of placing the limited liability partnership and all other persons in the same position as nearly as may be as if the limited liability partnership had not been dissolved; and
 - (b) requiring the registrar to publish a notice of the Court's decision and the effect of that decision on the certificate issued under paragraph (4) or under Regulations made under Article 38(1)(a).
- (8) The person on whose application the order under paragraph (6) was made shall 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.

23 Cancellation of registration

- (1) The registrar shall cancel the entry in the register relating to the limited liability partnership and issue a certificate of cancellation of registration where –
- (a) the registrar has been notified of the completion of the winding up of the affairs of the limited liability partnership pursuant to Regulations made under Article 38(1)(a); or
 - (b) the registrar has been notified under Article 38(3) of the Bankruptcy (Désastre) (Jersey) Law 1990.
- (2) On cancelling a limited liability partnership's registration under paragraph (1) or pursuant to Regulations made under Article 38(1)(a) the registrar shall publish a notice of that fact.
- (3) A certificate of cancellation of a limited liability partnership's registration issued by the registrar under paragraph (1) or pursuant to Regulations made under Article 38(1)(a) is conclusive evidence as to the cancellation of the registration of the limited liability partnership.
- (4) Despite paragraph (3), where the registration of a limited liability partnership has been cancelled under this Article or pursuant to Regulations made under Article 38(1)(a) –
- (a) on an application made by –
 - (i) a person who was a partner immediately before the cancellation, or
 - (ii) any other person appearing to the Court to be interested; and
 - (b) in circumstances described in those Regulations,
- the Court may at any time within 10 years of the date of the cancellation make an order, on such terms as the Court thinks fit, declaring the cancellation of registration void.
- (5) In making an order under paragraph (4), the Court may give such directions and make such provisions as seem to the Court to be just, including directions and provisions –
- (a) with the aim of placing the limited liability partnership and all other persons in the same position as nearly as may be as if the registration of the limited liability partnership had not been cancelled; and

- (b) requiring the registrar to publish a notice of the Court's decision and the effect of that decision on the cancellation of registration.
- (6) The person on whose application the order under paragraph (4) was made shall 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.
- (7) A person who fails to comply with paragraph (6) is guilty of an offence.

PART 5

MISCELLANEOUS AND GENERAL

24 Legal proceedings

- (1) Except as provided in Regulations made under Article 38(1)(a), legal proceedings by or against a limited liability partnership shall be instituted by or against the limited liability partnership and any judgment shall be made in such proceedings in favour of or against the limited liability partnership.
- (2) Subject to paragraph (3) and except as otherwise provided in Regulations made under Article 38(1)(a), no judgment shall be enforced against any limited liability partnership property unless such judgment has been made against the limited liability partnership.
- (3) Paragraph (2) shall not affect any right of a judgment creditor of a partner in a limited liability partnership to enforcement against that partner's partnership interest and any sum due to the partner from the limited liability partnership by way of repayment of a loan.
- (4) Where a judgment creditor of a partner in a limited liability partnership has a right of enforcement against any of that partner's assets under paragraph (3), the other partner or partners in the limited liability partnership may prevent or stop enforcement against those assets by paying to the creditor whichever is the lesser of the amount for which enforcement is sought and an amount equal to the value of the first mentioned partner's partnership interest plus any sum due to that partner from the limited liability partnership by way of repayment of a loan.
- (5) A judgment creditor or a partner in the limited liability partnership may apply to the Court for a determination of the value of any limited liability partnership property for the purpose of ascertaining the amount to be paid to the judgment creditor under paragraph (4).
- (6) Execution to enforce a judgment obtained against a limited liability partnership pursuant to paragraph (1) or against the person responsible for winding up the affairs of the limited liability partnership pursuant to Regulations made under Article 38(1)(a) shall only be capable of being issued against and satisfied out of the limited liability partnership property as at the date of such execution (no account being taken of any changes in the partners composing the limited liability partnership prior to such date).

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- (7) Any person shall have the right to join or otherwise institute proceedings against –
- (a) any partner or any former partner of a limited liability partnership who is liable by virtue of Article 5(3) or 12(6); and
 - (b) any person holding limited liability partnership property on behalf of a limited liability partnership, for the purposes of enforcement against that property.

25 Service of documents and other communications

- (1) Subject to paragraph (2) –
- (a) service of a document on a limited liability partnership may be effected by sending it by post or delivering it to the registered office of the limited liability partnership; and
 - (b) service of a document on a partner in the partner's capacity as such may be effected by sending it by post or delivering it either to the partner at the registered office of the limited liability partnership or at the address for service stated for the partner in the declaration.
- (2) The Chief Minister may by Order –
- (a) make provision for the registrar to be given information, in addition to the details required for the purposes of registration, by the limited liability partnership or its partners for the purpose of effecting service of documents relevant to the registrar's functions under this Law;
 - (b) make provision for service of documents and other communications to be effected, or be deemed to have been effected, by means in addition to, or instead of, the methods described in paragraph (1).

26 Order for compliance

- (1) Where a person who is required by this Law to sign or deliver any document, or permit the inspection, delivery, signing or copying of any document, fails to do so, a person who is aggrieved by the failure may apply to the Court for an order directing that person to comply with the Law and upon such application the Court may make such order as 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 failure and in addition to any other rights the applicant may have at law.

27 Appointment and functions of registrar

- (1) The registrar of companies appointed under Article 196 of the Companies (Jersey) Law 1991⁴ shall be the registrar of limited liability partnerships.
- (2) The registrar shall maintain a register of limited liability partnerships which shall contain any declaration, return or statement, or copy of any

such declaration, return or statement, delivered to the registrar and the issue of any certificate by the registrar pursuant to this Law.

- (3) Any certificate issued by the registrar under this Law shall be signed by the registrar and sealed with the registrar's seal (if any).
- (4) The Commission may direct a seal to be prepared for the authentication of documents required for or in connection with the registration of limited liability partnerships.
- (5) Any functions of the registrar under this Law may, to the extent authorized by the registrar, be exercised by an officer on the staff of the Commission.
- (6) The registrar, on application or of his or her own motion, if the registrar is satisfied that it is necessary to do so, may remove from the register material that –
 - (a) derives from anything invalid or ineffective or that was done without the authority of the limited liability partnership; or
 - (b) is inaccurate, or is derived from something that is inaccurate or forged.
- (7) Before exercising the power in paragraph (6), the registrar must publish his or her policy as to –
 - (a) who may make an application;
 - (b) the information to be included in and documents to accompany an application;
 - (c) the notice to be given of an application and of its outcome;
 - (d) a period in which objections to an application may be made;
 - (e) how an application is to be determined;
 - (f) the appeal process that will apply in a case where a person is aggrieved by the registrar's decision to remove the material.

28 Fees, charges and forms

- (1) The Commission may require the payment to it by a limited liability partnership of an annual administration fee, which shall be paid by the limited liability partnership in accordance with paragraph (3).
- (2) The States may by Regulations provide that, in addition to any annual administration fee, a limited liability 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 under paragraph (2) (if any) are payable by a limited liability partnership to the Commission before the end of February in each year following the year in which the limited liability partnership is registered.
- (4) An annual administration fee and an annual additional amount (if any) are debts due by a limited liability partnership to the Commission, and are recoverable accordingly in a court of competent jurisdiction.

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- (5) The Commission shall pay to the Treasurer of the States any additional amounts that are paid to the Commission under Regulations made under paragraph (2).
 - (6) The Commission may additionally require –
 - (a) the payment to it of fees in respect of the performance by the registrar of his or her functions under this Law;
 - (b) the payment of a fee for the provision by the registrar of –
 - (i) any service or assistance, or
 - (ii) any documents, or information; and
 - (c) the payment of a late delivery fee if a copy of a document is not delivered to the registrar as required by this Law, which shall be payable when the document is delivered.
 - (7) Where a fee mentioned in paragraph (6) is payable in respect of the performance of a function by the registrar, the registrar need take no action until the fee is paid.
 - (8) 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.
 - (9) 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 authenticated.
 - (10) Where this Law requires a document to be delivered to the registrar, but the form of the document has not been published by the Commission, it shall be sufficient compliance with the requirement if a document or the information it must contain is delivered in a form and manner acceptable to the registrar.
 - (11) A fee referred to in this Article is the fee for the time being published for this purpose and in effect, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998.

29 Inspection and production of documents kept by registrar

- (1) 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 (if any).
- (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.

- (3) The registrar may publish details of the times during which, and the manner by which, a document may be inspected or issued under paragraph (1).

30 Production and inspection of records where offence suspected

- (1) If, on an application by the Attorney General, there is shown to be reasonable cause to believe that a person has, while a partner or secretary of the limited liability partnership, committed an offence in connection with the management of the limited liability partnership's affairs and that evidence of the commission of the offence is to be found in any records of or under the control of the limited liability partnership or a partner or secretary, the Court may make an order –
 - (a) authorizing a person named in it to inspect the records in question for the purpose of investigating and obtaining evidence of the offence; or
 - (b) requiring the secretary or a partner of the limited liability partnership named in the order to produce and make available the records to a person named in the order at a place so named.
- (2) The decision of the Court on an application under this Article is not appealable.

31 Destruction of old records, etc.

- (1) Where a limited liability partnership has been dissolved, the registrar may, at any time after 10 years from the date of the cancellation of its registration, destroy any records relating to that limited liability partnership in the registrar's possession or under the registrar's control.
- (2) After 10 years from the cancellation of a limited liability partnership, no responsibility rests on any 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.

32 Legal professional privilege

Where criminal proceedings are instituted by the Attorney General under this Law against any person, nothing in this Law is to be taken to require any person to disclose any information which the person is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in a court.

33 Registration in the Public Registry

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

34 Offences of giving false or misleading etc. information

- (1) A person who makes a statement in any document, material, evidence or information which is required to be delivered to the registrar under this Law that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or that omits to state any material fact the omission of which makes the statement false or misleading, shall be guilty of an offence.
- (2) A person shall not be guilty of an offence under paragraph (1) if the person did not know that the statement was false or misleading and with the exercise of reasonable diligence could not have known that the statement was false or misleading.
- (3) A person who carries on a business under a name or title which includes the words “limited liability partnership” or any contraction of those words when the person is not registered as a limited liability partnership under this Law or otherwise established as a limited liability partnership in another jurisdiction, shall be guilty of an offence.
- (4) A person who wilfully takes or uses any name, title, addition or description implying that the person is a partner in a limited liability partnership when the person is not, or implying that a person is a partner in a partnership which is not a limited liability partnership when the partnership is a limited liability partnership, shall be guilty of an offence.

35 Criminal liability of partners, directors and other officers

- (1) This Article applies where an offence under this Law by a body corporate, a limited liability partnership or any other partnership with separate legal personality 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 an incorporated limited partnership, a general partner or a limited partner who is participating in the management of the partnership;
 - (b) in the case of any other body corporate, a director, manager or other similar officer of the body corporate;
 - (c) in the case of a limited liability partnership, a partner;
 - (d) in the case of a separate limited partnership or any partnership with a separate legal personality except a limited liability partnership, a general partner or a limited partner who is participating in the management of the partnership; 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 to the penalty provided for that offence in the same manner as the incorporated limited partnership, other body corporate, limited

liability partnership, separate limited partnership or other partnership with separate legal personality.

- (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 that member's functions of management as if the member were a director of the body corporate.

36 Penalties

- (1) The penalty for an offence under Article 6(13), 7(11), 8(5), 9(4), 10(6), 10(7), 10(8), 10(9), 11(5), 12(4), 19(3), 20(4), or 23(7) shall be a fine not exceeding level 3 on the standard scale.
- (2) The penalty for an offence under Articles 12(12), 12(13), 34(1), 34(3) or 34(4) shall be a fine and 2 years imprisonment.

37 Limitation of liability

- (1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or any enactment made, or purportedly made, under this Law unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to –
 - (a) the States;
 - (b) the Chief Minister or any person who is, or is acting as, an officer, servant or agent in an administration of the States for which the Chief Minister is assigned responsibility;
 - (c) the Commission, any Commissioner or any person who is, or is acting as, an officer, servant or agent of the Commission; and
 - (d) the registrar, the deputy registrar, an assistant registrar or any person who is, or is acting as, an officer, servant or agent of the registrar.

38 Regulations

- (1) The States by Regulations may provide for –
 - (a) the dissolution and winding up of solvent or insolvent limited liability partnerships;
 - (b) the recognition of proceedings in other jurisdictions brought by, for or against a limited liability partnership;
 - (c) the preparation of accounts of limited liability partnerships, including –
 - (i) the form and content of financial statements,
 - (ii) the period they need to cover, and
 - (iii) the time limits by which they should be prepared or submitted; and

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- (d) the audit and supervision of limited liability partnerships.
- (2) Regulations made under paragraph (1)(a) may include following provisions for the purposes of, in connection with or in consequence of the dissolution or winding up of the limited liability partnership –
 - (a) the settling of accounts on dissolution and winding up;
 - (b) the appointment and qualifications of an insolvency manager;
 - (c) when the registration of a limited liability partnership ceases to have effect;
 - (d) the circumstances, in the dissolution or winding up of a limited liability partnership, when a limited liability partnership is not a legal person as described in Article 2(4);
 - (e) the vesting or holding of limited liability property or the interests of the partners in the limited liability partnership property in the dissolution or winding up;
 - (f) the liability of a partner or former partner when limited liability partnership property is withdrawn otherwise than in the ordinary course of the affairs of the limited liability partnership;
 - (g) the circumstance when the duty to appoint a secretary ceases;
 - (h) the duties of a secretary or former secretary in respect of the keeping or delivery of accounting records;
 - (i) the retirement of a partner;
 - (j) circumstances when an application may be made for the registration of a dissolution of a limited liability partnership to be cancelled;
 - (k) the actions to be taken after the dissolution of a limited liability partnership, including the issuing or cancellation of any certificate or the publishing of any notice;
 - (l) the institution of legal proceedings or the enforcement of a judgement on behalf of or against a limited liability partnership.
 - (3) Paragraph (2) does not limit the generality of paragraph (1)(a).
 - (4) Regulations made under paragraph (1)(d) may –
 - (a) stipulate qualifications for auditors;
 - (b) provide for their registration, appointment, functions, powers, duties, status and immunities; and
 - (c) provide 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 liability partnerships.
 - (5) Paragraph (4) does not limit the generality of paragraph (1)(d).
 - (6) The States may by Regulations amend Articles 1, 6 to 12, 18 to 20, 22, 23, 25, 27 to 29 and 31.
 - (7) Regulations made under this Law may make amendments to any enactment, including any provision of the Schedule that is not in force, as appear to the States to be expedient in connection with the repeal of the

Limited Liability Partnerships (Jersey) Law 1997⁵ or the coming into force of this Law.

- (8) Regulations made under this Law may make any provision for the purpose of carrying this Law into effect and may –
- (a) provide for the Chief Minister or Commission to exercise a discretion in respect of matters provided for in the Regulations;
 - (b) make different provision for different cases and contain such incidental, supplemental, transitional, consequential and savings provisions as appear to the States to be necessary or expedient; and
 - (c) create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine.

39 Orders

- (1) The Chief Minister may by Order prescribe any matter which is to be prescribed under this Law.
- (2) An Order made under this Law may make different provision for different cases and contain such incidental, supplemental and transitional provisions as appear to the Chief Minister to be necessary or expedient.
- (3) The Chief Minister shall consult the Commission before making any Orders under this Law.

40 Rules of Court

The power to make rules of court under the Royal Court (Jersey) Law 1948⁶ shall include a power to make Rules for the purposes of this Law.

41 Professional rules not affected by Law

Nothing in this Law affects any duty arising in respect of partners that are subject to the rules or laws of Jersey in respect of their profession as a solicitor, advocate, accountant or other profession.

42 Customary law

The rules of customary law applicable to a partnership shall apply to a limited liability partnership except in so far as they are inconsistent with the express provisions of this Law.

43 Amendments to other enactments and repeals

- (1) The Limited Liability Partnerships (Jersey) Law 1997⁷ shall be repealed.
- (2) The enactments specified in the Schedule are amended to the extent and in the manner specified in the Schedule.

44 Citation and commencement

This Law may be cited as the Limited Liability Partnerships (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

SCHEDULE

(Article 39)

AMENDMENTS TO OTHER ENACTMENTS AND REPEALS**1 Control of Borrowing (Jersey) Law 1947 amended**In the Control of Borrowing (Jersey) Law 1947⁸ –

- (a) In Article 1(1), in the definition “limited liability partnership”, for the words “has the meaning given to it by the Limited Liability Partnerships (Jersey) Law 1997⁹” there shall be substituted the words “means a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 201-¹⁰”;
- (b) In Article 1(6) and 2(10)(b) for the word “1997” there shall be substituted the word “201-”.

2 Collective Investment Funds (Jersey) Law 1988 amendedIn the Collective Investment Funds (Jersey) Law 1988¹¹ –

- (a) in Article 5(2) for the word “1997” there shall be substituted the word “201-”;
- (b) in Article 8 –
 - (i) for sub-paragraph (1)(c) there shall be substituted the following sub-paragraph –

“(c) the general partner of an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011¹², a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994¹³ or a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011¹⁴, that is an unclassified fund managed from within Jersey.”.
 - (ii) after paragraph (1) there shall be inserted the following paragraph –

“(1A) A limited liability partnership shall not carry on the business of a collective investment fund.”, and
 - (iii) in paragraph (2), after the words “paragraph (1)” there shall be inserted the words “or (1A)”;
- (c) for Article 8A(1)(c) there shall be substituted the following sub-paragraph –

“(c) the general partner of an incorporated limited partnership, a limited partnership or a separate limited partnership that is an unclassified fund.”;
- (d) for Article 8B(10)(b)(iii) there shall be substituted the following paragraph –

“(iii) where the fund is an incorporated limited partnership, a limited partnership or a separate limited partnership, the general partner of the partnership;”.

3 Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012 amended

In the Collective Investment Funds (Certified Funds – Prospectuses) (Jersey) Order 2012¹⁵ –

- (a) In Article 1(1) –
- (i) in paragraph (c) of the definition “documents constituting the fund” the words “a limited liability partnership,” shall be deleted,
 - (ii) in the definition “general partner” paragraph (b) shall be deleted;
- (b) In Schedule 1 –
- (i) paragraph 13(i) shall be deleted,
 - (ii) in paragraphs 14(1)(c)(vii), 17(h)(vi) and 20(6) the words “a limited liability partnership,” wherever they appear, shall be deleted,
 - (iii) For paragraph 16(a)(iv) there shall be substituted the following clauses –
 - “(iv) where the fund is an incorporated limited partnership, a limited partnership or a separate limited partnership, every director of the general partner, or
 - (A) if the general partner is an incorporated limited partnership, a limited partnership or a separate limited partnership, every director of the general partner of the partnership which is itself the general partner of the fund, or
 - (B) if the general partner is a limited liability partnership, every director of every partner of the partnership which is a company; and”.

4 Companies (Jersey) Law 1991 amended

In the Companies (Jersey) Law 1991¹⁶ –

- (a) In Article 1(2)(d), and in the definition of “partnership” in Article 102(1), for the word “1997” each time it appears there shall be substituted the word “201-”; and
- (b) for Article 127GA(2)(a) there shall be substituted the following subparagraphs –
- “(a) to mergers of companies with bodies that are incorporated in Jersey but are not companies;
 - (ab) to mergers of companies with limited liability partnerships that are registered in Jersey under the Limited Liability Partnerships (Jersey) Law 201-¹⁷; and”.

5 Financial Services (Jersey) Law 1998 amended

In the Financial Services (Jersey) Law 1998¹⁸ –

- (a) in Article 1(1) in the definition “secretary”, after the words “howsoever named” there shall be inserted the words “, or a person appointed as the secretary of a limited liability partnership under the Limited Liability Partnerships (Jersey) Law 201-¹⁹”;
- (b) in Article 2(3) –
 - (i) in sub-paragraph (b) the word “or” shall be deleted,
 - (ii) for sub-paragraph (c) shall be substituted following sub-paragraphs –
 - “(c) the provision of services to foundations; or
 - (d) the provision of services to partnerships not being services described in sub-paragraph (a), (b) or (c),”;
 - (iii) in paragraph 2(4)(e), after the word “company” there shall be inserted the words “or a limited liability partnership”;
- (c) in Article 41(4), after the word “partner” there shall be inserted the words “or secretary”.

6 Income Tax (Jersey) Law 1961 amended

In the Income Tax (Jersey) Law 1961²⁰ –

- (a) in Article 3(1), in the definition of “partnership” for the word “1997” there shall be substituted the word “201-”;
- (b) in Article 3AD(1)(b) for the word “1997” there shall be substituted the word “201-”;
- (c) for Article 76D(7) and (8), there shall be substituted the following paragraphs –
 - “(7) Where –
 - (a) a partner in a limited liability partnership –
 - (i) is resident in Jersey, or
 - (ii) is non-resident in Jersey and entitled to profits or gains, other than those excluded from the provisions of this Law by paragraph (4); and
 - (b) the Comptroller, by general notice or by notice addressed to ‘the responsible partner’ and sent to the registered office of the limited liability partnership, requires a statement to be prepared of profits or gains arising to the partners from the activities of the limited liability partnership,

the responsible partner must deliver the statement.
 - (8) For the purposes of paragraph (7) ‘the responsible partner’ required to deliver the statement is –
 - (a) the secretary of the limited liability partnership, in the case where the secretary is a partner in the limited liability

- partnership and is an individual who is ordinarily resident in Jersey;
- (b) in the case where the limited liability partnership does not have a secretary fitting the description in sub-paragraph (a), the first named partner in the declaration of the limited liability partnership who is an individual ordinarily resident in Jersey or a person that has a registered office in Jersey; and
 - (c) in the case where the limited liability partnership has neither a secretary fitting the description in paragraph (a), nor a partner fitting the description in sub-paragraph (b), the first named partner in the declaration.
- (9) A notice sent in accordance with paragraph (7) shall be deemed to have been served upon the responsible partner.
- (10) In this Article –
- (a) ‘declaration’, ‘limited liability partnership’, ‘partner’ and ‘secretary’ have the same meaning as they have in the Limited Liability Partnerships (Jersey) Law 201-²¹; and
 - (b) ‘profits or gains’ does not include profits or gains of a capital nature.’’.

7 Other enactments amended

- (1) In the following provisions, for the word “1997” in each place it appears there shall be substituted the word “201-” –
- (a) Article 1(1) of the Registration of Business Names (Jersey) Law 1956²², in the definition “limited liability partnership”;
 - (b) Article 11(1)(c), and 11(3) of the Control of Borrowing (Jersey) Order 1958²³;
 - (c) Articles 4(a)(xi) and 13(2)(b) of the Security Interests (Jersey) Law 1983²⁴;
 - (d) Article 3(3)(b) of the Banking Business (Jersey) Law 1991²⁵;
 - (e) Article 5(6) of the Insurance Business (Jersey) Law 1996²⁶;
 - (f) Article 6(b) of the Financial Services Commission (Jersey) Law 1998²⁷;
 - (g) Article 1(1), in paragraph (c) of the definition “Island person”, and Article 8(2)(b)(iii) of the Crime and Security (Jersey) Law 2003²⁸;
 - (h) Article 8(1)(c) of the Crime (Transnational Organized Crime) (Jersey) Law 2008²⁹;
 - (i) Article 1(1) of the Money Laundering (Jersey) Order 2008³⁰, in the definition “Jersey limited liability partnership”;
 - (j) Regulation 2 of the Alternative Investment Funds (Jersey) Regulations 2012³¹, in the definition “limited liability partnership”.
- (2) In the following provisions, for the words “has the meaning given to it in the Limited Liability Partnerships (Jersey) Law 1997³²” there shall be

substituted the words “means a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 201-³³” –

- (a) Article 1(1) of the Bankruptcy (Désastre) (Jersey) Law 1990³⁴, in the definition “limited liability partnership”;
 - (b) Article 1(1) of the Corruption (Jersey) Law 2006³⁵, in the definition “limited liability partnership”.
- (3) In Article 3(2)(c) of the Alternative Investment Funds (Jersey) Regulations 2012³⁶, for the words “Article 16 of the Limited Liability Partnerships (Jersey) Law 1997³⁷” there shall be substituted the words “the Limited Liability Partnerships (Jersey) Law 201-³⁸”.
- (4) In the Financial Services (Financial Service Business) (Jersey) Order 2009³⁹, in Part 2 of the Schedule, in the 2nd column, opposite the item lettered I, after the word “company” there shall be added the words “or as secretary of a limited liability partnership”.
- (5) In Article 23(4)(j) of the Money Laundering (Jersey) Order 2008⁴⁰, after the word “1998)” there shall be added the words “, or appointed under Regulations made under Article 38(1)(a) of the Limited Liability Partnerships (Jersey) Law 201-⁴¹”.

1	<i>chapter 13.250</i>
2	<i>chapter 13.225</i>
3	<i>chapter 04.160</i>
4	<i>chapter 13.125</i>
5	<i>chapter 13.475</i>
6	<i>chapter 07.770</i>
7	<i>L.3/1997 (chapter 13.475)</i>
8	<i>chapter 24.150</i>
9	<i>chapter 13.475</i>
10	<i>P.95/2016</i>
11	<i>chapter 13.100</i>
12	<i>chapter 13.370</i>
13	<i>chapter 13.500</i>
14	<i>chapter 13.780</i>
15	<i>chapter 13.100.20</i>
16	<i>chapter 13.125</i>
17	<i>P.95/2016</i>
18	<i>chapter 13.225</i>
19	<i>P.95/2016</i>
20	<i>chapter 24.750</i>
21	<i>P.95/2016</i>
22	<i>chapter 13.650</i>
23	<i>chapter 24.150.50</i>
24	<i>chapter 13.775</i>
25	<i>chapter 13.075</i>
26	<i>chapter 13.425</i>
27	<i>chapter 13.250</i>
28	<i>chapter 08.110</i>
29	<i>chapter 08.130</i>
30	<i>chapter 08.780.30</i>
31	<i>chapter 17.245.51</i>
32	<i>chapter 13.475</i>
33	<i>P.95/2016</i>
34	<i>chapter 04.160</i>
35	<i>chapter 08.090</i>
36	<i>chapter 17.245.51</i>
37	<i>chapter 13.475</i>
38	<i>P.95/2016</i>
39	<i>chapter 13.225.04</i>
40	<i>chapter 08.780.30</i>
41	<i>P.95/2016</i>