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**Consultation on Limited Liability Companies (Jersey) Law 201-**

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Summary:

The Chief Minister's Department is exploring the proposal to enact a law enabling the creation of limited liability companies ("**LLCs**"). The aim of this consultation is to invite comments on a draft of the proposed new Limited Liability Companies (Jersey) Law 201-.

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Date published:

Closing date:

**20 November 2017**

**12 January 2018**

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Supporting documents attached:

Limited Liability Companies (Jersey) Law 201- (the "**Draft Law**")

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**How we will use your information**

The information you provide will be processed for the purpose of consultation. The Department of the Chief Minister will use your information in accordance with the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011.

Please note that we may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

**Outline of consultation**

The US LLC (noting variations between US states) is an entity historically based on mainland-European equivalents (GmbH and S.à r.l). Since the first US LLC legislation was passed in 1977 (and the subsequent confirmation of treatment by the US Internal Revenue Service) it has grown into a predominant business form, now accounting for over two-thirds of new formation choices for transparent vehicles in the US each year.

The appeal of the US LLC is largely due to its flexibility, with it being used for a variety of purposes, from simple businesses undertaken by one or more persons to being used as the

ultimate holding vehicle of Fortune 500 companies. It is also popular as a special purpose vehicle in finance and fund structures. Since its introduction, Isle of Man, Bermuda and Cayman Islands have also introduced versions of the LLC into their domestic legislation, with reports suggesting the latter (both introduced in 2016) are proving popular in financial and investment transactions.

The Draft Law is therefore intended to permit and govern the creation and use of LLCs in Jersey. It is envisaged the introduction of a US-familiar vehicle would contribute to Jersey being an increasingly attractive jurisdiction for US (and equivalent European) business, as well as catering to our growing US market generally (North American assets and funds administered in Jersey in 2016 totalled approximately £169bn). The addition of LLCs to Jersey (which would innovatively combine various features of Jersey limited companies and statutory partnerships) would also provide a new corporate tool for the finance industry, an objective consistent with the general principles of Government's published Jersey Financial Services Policy Framework.

Respondents should note that, in preparing the Draft Law (and as outlined in the Notes throughout this consultation), specific regard has been had to LLC laws in other jurisdictions and the features of existing Jersey entities with a view to ensuring that Jersey LLCs would fit within our existing statutory and regulatory frameworks and in order to be consistent with our status as a leading and regulatory compliant international finance centre. Responses (and the final form of the Draft Law) will be considered on the same basis.

### **Summary of the Jersey LLC**

The proposed Jersey LLC would combine elements of both Jersey limited companies and statutory partnerships, resulting in it having a separate legal personality without being a "body corporate" (a distinction explained in more detail at Note 2 below). It would also be a transparent entity for tax purposes (i.e. the profits would be allocated to the members of the LLC, who would be required to pay income tax in the jurisdiction(s) in which they are tax resident) although it would have the ability to elect to be treated as a company instead (please note this election is not addressed within the Draft Law and is instead envisaged to be a "tick-box" election made in a registration document to be filed with the Jersey Taxes Office).

We would suggest the closest jurisdictional equivalent in Jersey, where the vehicles available have been historically closer to those in the UK, is (depending on election and the drafting of the LLC agreement) most likely to be the limited liability partnership ("LLP"). However, as the Jersey LLP was designed more strictly in line with partnership (and UK) law, it can be considered a more prescriptive vehicle than the LLC. Furthermore, US law has also evolved so that some LLCs may create "series" in a similar manner to which a Jersey protected cell

company (“PCC”) may create cells (although this feature is not available in all LLC jurisdictions).

In terms of basic structure, an LLC consists of one or more members (which sound similar to shareholders in a company, but in substance are more akin to partners in an LLP) and, if appointed, one or more managers (which sound similar to managing or general partners of a partnership, but in substance are more akin to directors in a company) who may or may not also be members (similar to a Jersey company).

The structure of the proposed Jersey LLC is described more fully in this consultation paper, however, its characteristics (and how they would compare to a Jersey company limited by shares (“LTD”) and a Jersey LLP) can be summarised as follows:

- (a) it would have separate legal personality but not be a body corporate (akin to a Jersey LLP) and therefore has the ability to hold assets and enter into contracts in its own name (akin to both an LTD and an LLP);
- (b) where the Draft Law does not require otherwise, it would be governed by the terms of a private "LLC agreement" (akin to a partnership agreement in an LLP), which would be binding on the LLC, each member and each manager (if applicable) regardless of whether they are party to it (akin to articles of association of an LTD);
- (c) subject to the LLC agreement, all management powers would vest in its members (akin to partners in an LLP) unless managers are appointed, who may but need not be members (akin to directors in an LTD);
- (d) managers are under a duty to act in good faith in the performance of their management duties (akin to directors in an LTD) although the LLC agreement may expand or restrict that duty and, subject to the law and the LLC agreement (akin to an LLP), a manager would not owe any other fiduciary duties to the LLC, any member or any other person;
- (e) subject to the LLC agreement, a member would not owe any fiduciary duties to the LLC or any other member in exercising its rights or in performing any of its obligations (akin to shareholders in an LTD);
- (f) subject to the LLC agreement, members (and managers) may be divided into classes for the purposes of voting and entitlement to distributions/payments and may hold meetings (or prove written consent) on LLC matters (akin to shareholders (and directors) in an LTD) with each member (and/or manager) having the authority to bind the LLC (akin to partners in an LLP/directors in an LTD depending on the drafting of the LLC agreement);
- (g) it would be formed by the filing of a declaration (akin to an LLP) and may be formed for any lawful purpose (akin to an LTD) by one or more members (akin to an LTD) who, subject to the LLC agreement (optionality being an innovate feature), may be required

to contribute cash, property or services (or promise of the same) to the LLC with capital accounts credited for such contributions (akin to partners in an LLP);

- (h) subject to the LLC agreement (optionality being an innovative feature) each member would have an "LLC interest" in the profits (and losses) of the LLC and a right to receive distributions of LLC property (akin to an LLP) but the assets (and liabilities) of the LLC would belong to the LLC (akin to both an LLP and an LTD);
- (i) it would have the ability to create series (akin to cells in a PCC and therefore an innovative feature in an LLP-like context) with each having its own legal identity separate from that of the LLC and therefore the ability to contract and hold assets in its own name; and
- (j) it could elect to be treated for tax purposes as a company rather than a partnership (election being an innovative feature; although please note this is not directly addressed in the Draft Law and is instead envisaged to be a "tick-box" election made in a registration document to be filed with the Jersey Taxes Office).

As briefly explained above, Jersey has to date (and in following the UK) sought to rely on the LLP as the jurisdictional equivalent to an LLC (i.e. a transparent entity with limited liability). This is predominantly because the LLP is believed to be more likely (following recent reforms) to be recognised by the English courts and HMRC as a transparent entity for tax purposes (there have been recent developments to suggest that LLCs may be treated as transparent for tax purposes on a case-by-case basis in the UK, but HMRC has stated that its starting position is to treat an LLC as a company). For that reason, it is envisaged that the Jersey LLC would not be an entity that would (currently) be recommended for use in a structure that sees it directly involved with the UK, where we expect the use of LLPs to prevail. Instead, the introduction of LLCs to Jersey is predominantly aimed at catering to our growing US market by providing a familiar vehicle for US funds into Jersey and recommended only for direct onward use when dealing with a jurisdiction where the use and treatment of LLCs as a transparent tax entity is both recognised and familiar (including the US itself).

### **Regulation**

In November 2016, Jersey published a Beneficial Ownership of Jersey Corporate and Legal Entities and a Register of Directors Policy Document (available via the gov.je website). Respondents should note that Jersey's disclosure requirements in respect of ultimate beneficial owners and controllers would equally apply to the proposed model of LLCs. In addition, and for the avoidance of doubt, as the LLC would require registration at the Companies Registry, the Sound Business Practice Policy (published November 2014 and available on the JFSC website) would apply.

Whilst the COBO policy is in place, it is anticipated that LLCs would require COBO consents in a similar manner to LLPs and that the Control of Borrowing (Jersey) Order 1958 would require amendments accordingly, most likely by the insertion of an equivalent to Article 11 (*Limited liability partnerships*) therein.

It is also envisaged that LLCs would be required to engage a local financial services provider and therefore Jersey's AML/CFT regime would apply, with the provision by way of business in or from within Jersey in respect of formation services (or arranging for someone to do the same), manager services (or arranging for someone to do the same), registered office or business address services, nominee services in respect of LLC interests and the provision of accommodation, correspondence or administrative address for an LLC each falling under trust company business for the purposes of the Financial Services (Jersey) Law 1998. That law will therefore need to be amended to reflect the policy position and it would be Government intention that there be no legislative gap, with regulations passed concurrently with the Draft Law.

As to an LLC conducting any form of regulated financial services business itself, this question is still under review and will be subject to further policy and development questions but it is anticipated that LLCs would likely follow the same course as LLPs. For example (in the first instance at least) it is anticipated that LLCs would not be permitted to be authorised as Collective Investment Funds with the JFSC licensing policy needing to be amended with respect to including LLCs as, for example, fund services business.

Respondents are, of course, welcome to provide comments in respect of all prospective regulation.

### **Ways to respond**

Respondents are invited to comment generally on the draft law as follows:

**Write to:** Kristin Holmes  
Financial Services Unit, Chief Minister's Department  
7<sup>th</sup> Floor, Cyril Le Marquand House  
The Parade, St Helier,  
Jersey JE4 8UL

**Telephone:** +44 (0) 1534 440 427

**Email:** [k.holmes@gov.je](mailto:k.holmes@gov.je)

Responses from the finance industry may be sent to Jersey Finance at the address below:

**Write to:** Helen De La Cour  
Jersey Finance Limited  
4th Floor, Sir Walter Raleigh House  
48-50 Esplanade  
St Helier  
Jersey JE2 3QB

**Telephone:** +44 (0) 1534 836 010

**Email:** [helen.delacour@jerseyfinance.je](mailto:helen.delacour@jerseyfinance.je)

Please note that responses sent to Jersey Finance will be shared with Government unless the respondent indicates that they wish to remain anonymous. Please indicate clearly on your response if this is the case.

### **Feedback on this consultation**

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact [Communications.Unit@gov.je](mailto:Communications.Unit@gov.je)

## **Consultation on the Draft Law**

### **Introduction**

1. The Chief Minister invites responses on the text of the Draft Law, a copy of which is attached to this consultation paper.
2. With regard to the source material for the Draft Law, respondents should note that each US state has authorised the formation of LLCs in its jurisdiction. As one might expect, their laws are not uniform. They do, however, share many of the same basic principles and, whilst attempts have been made at creating a uniform LLC law, the most popular legislative source for LLCs (certainly in large value private equity circles) appears to be the Limited Liability Company Act (*Title 6 – Commerce and Trade, Subtitle II Other Laws Relating to Commerce and Trade, Chapter 18*) of Delaware. Indeed, Bermuda and the Cayman Islands both appear to have used it as their basis for their own versions. There are various reasons for this popularity, not least the apparent business expertise of its courts, case law and swiftness to amend legislation to reflect decisions, but also its policy to give maximum effect to the principle of freedom of contract and enforceability of the LLC agreement. As the perceived business standard, we have therefore used that legislation as the starting point for the Draft Law and refer to it in this consultation for convenience as the “**US Law**”. However (as outlined in the summary above and in the Notes throughout this paper), other sources have been considered with a view to ensuring that Jersey LLCs fit within our existing Jersey law framework and compliance with international regulation standards (for example, with regard to the formation/registration process and the discussions around series and solvency requirements). We therefore ask that such standards are equally borne in mind when responding.
3. The Draft Law does, of course, reflect Jersey as the relevant jurisdiction of formation with regards to terminology but, for consistency with the objective outlined above (i.e. to ensure familiarity to the US market), the language of US LLCs (including its name) has been retained wherever possible. Respondents should therefore be aware that there is a clear intention here to mirror the language of the US LLC in both terminology and effect unless Jersey-specific amendments are considered absolutely necessary.

### **Part 1 - Preliminary**

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

**Note 1:**

The definitions take their lead from their US Law equivalents with Jersey-specific definitions added as applicable. We have not listed them here in full as their use is primarily discussed in context below the appropriate Article, but respondents should note for comparison with the US Law that:

- (a) the definition of a “certificate of formation” (with formation taking effect upon filing) in the US Law has been replaced with the filing of a “declaration” and the issuance of a “certificate of formation” by the registrar (with formation to take effect upon registration) as discussed in Note 4 below;
- (b) the definition of “contribution” reflects the US Law version with the addition of “does not include any moneys lent or agreed to be lent to an LLC”, for the purposes of distinguishing contributions from loans made by a member (a concept permitted by Article 2 and an amendment also made by the Cayman Islands);
- (c) the definition of an LLC in the US Law refers to a “domestic limited liability company” for the purposes of distinguishing it from a “foreign limited liability company” (with provisions regarding registration), concepts which are not (currently) included in this Draft Law (if desirable future Regulations may provide);
- (d) the definition of “LLC agreement” is restricted to the description and form elements of the definition in the US Law (the other provisions in that US Law definition are addressed instead by Article 3) with the addition of “and any amendments or additions thereto” to ensure such are covered (an amendment also made by the Cayman Islands);
- (e) the definition of “LLC interest” reflects the US Law (which refers to a member’s share of the profits and losses of the LLC and right to receive distributions) with the addition of “any other rights, benefits and obligations to which the member is entitled or subject pursuant to the LLC agreement or the Draft Law” to ensure such are covered (an amendment also made by the Cayman Islands);
- (f) the definition of “manager” reflects the US Law with the addition of “a member in whom the management of a limited liability company is vested”, to cover the scenario of a member engaged in the management of the LLC throughout (a drafting approach also taken by Bermuda and the Cayman Islands); and

(g) the definition (and concept) of a “registered agent” in the US Law has not been included for the reasons given in Note 5.

## **Part 2 – Formation, registration etc. of limited liability company**

Part 2 comprises Articles 2 to 10 and set out the essential elements of an LLC.

### **Article 2 – Limited liability company**

4. This Article outlines the legal status of the LLC (having legal personality separate from its members) and that: it may be formed for any lawful purpose (whether or not for profit); shall be dissolved and have its affairs wound up only pursuant to the LLC agreement or the Draft Law; subject to the LLC agreement, it has unlimited capacity; it must consist of one or more members and may appoint one or more managers (with body corporates permitted as both and managers and members); and it may contract with its members and managers (and indemnify them).

#### **Note 2:**

This Article predominantly take its influence from sections 18-106 to 18-108, 18-201 of the US Law. By comparison, respondents will note that LLPs, for example, require two or more persons carrying on a business with a view to a profit, which is intended to satisfy Jersey customary law and the English law criteria for a partnership so that transparency for tax purposes can be achieved. The Draft Law has no such requirement (although practitioners have the freedom to draft the LLC agreement otherwise) as the LLC is to simply have the ability to elect for transparency or company-like tax status. This means that an LLC could be formed to directly or indirectly acquire, hold or dispose of property in any jurisdiction (including Jersey), engage in commercial trading or be formed for charitable and non-charitable purposes or social, educational and recreational activities which are not run in order to create profits for the individual members.

Respondents should note that the US does not share our exact concept of a “body corporate” or “separate legal personality”. Instead, a “legal entity” (which can include partnerships as well as corporates). Therefore, for the purposes of our jurisdiction, the Draft Law follows the approach taken by our suggested closest equivalent, the Jersey LLP, which provides for separate legal personality without being a body corporate. Whilst the LLC is not an entity (currently) aimed at the UK, this is also considered to be a sensible position for anticipating potential future use in that jurisdiction (by comparison the English

LLP is designated by statute as a body corporate but this circumvents English partnership law in a manner that is unavailable to foreign jurisdictions) as well as maintaining consistency with LLPs (we anticipate future legislation and regulation for LLCs will also follow this approach). By way of further comparison, the Cayman LLC is specifically designed as a body corporate (as is the Guernsey LLP) whereas Bermuda mirrors the US Law approach of simply designating as a legal entity with status governed by its laws.

For similar reasons, an LLC is not stated as having perpetual succession. Instead the Draft Law provides that an LLC shall be dissolved and have its affairs wound up only pursuant to the LLC agreement (which can provide that an LLC is intended to have perpetual succession or cease upon the happening of certain events) or the Draft Law.

**Question 1:**

- (a) Do you agree that there is market for LLCs in Jersey for the purposes of targeting US (and EU equivalent) business notwithstanding that certain jurisdictions (e.g. England and Wales) may not recognise them as transparent entities for the purposes of taxation and they are therefore unlikely to be used (at least directly) in transactions involving such jurisdictions? If so, what do you envisage a Jersey LLC being used for (e.g. within an investment fund structure)? Please be as specific as possible.
- (b) Do you agree that Jersey should have an LLC law in place in order to market to the UK if the English law (and HMRC) position changes so as to readily recognise LLCs as transparent entities (if so elected)?
- (c) Based on current drafting, do you believe that a Jersey LLC would give rise to any actual or potential risks to Jersey? If so, please explain such risks.
- (d) Do you agree with the approach that a Jersey LLC should be designated as an entity with separate legal personality rather than a body corporate? If not, please explain your reasoning.
- (e) Do you agree that an LLC should have the right to elect to be treated for tax purposes as either a company or as a partnership? If so, do you believe there should be a default position under law (and if so, do you agree that the default position should be to be treated as a partnership i.e. transparent as per the US Law)?

- (f) Do you agree with an LLC agreement being able to provide for perpetual succession? Please explain the reasons for your response.
- (g) Do you agree that it is not necessary for the Draft Law to require that an LLC must "carry on a business" with "a view to a profit" (noting that the LLC agreement may provide otherwise)?

### Article 3 – LLC agreement generally

5. This Article outlines the requirement for and general content of the LLC agreement including that: the timing of entry into the LLC agreement may be before, upon or after the filing of the declaration for registration and formation; the LLC agreement will take effect either upon the issue of the certificate of formation or at such other date specified in the LLC agreement; its governing law shall be Jersey; its binding nature on the LLC, the members and managers (and assignees) without any need for them to be a party; it may give rights to a third party (who may enforce without being a party); its method of amendment (i.e. as specified therein or with unanimous member consent); and it may specify remedies, sanctions, penalties and consequences, which shall not be unenforceable solely on the basis they are in nature a penalty or forfeiture.

#### Note 3:

This Article takes its influence from the definition of LLC agreement in and sections 18-201, 18-302, 18-306, 18-405, 18-502, 18-901 and 18-1101 of the US Law. Respondents will note that the LLC agreement is akin to an LLP agreement in the sense that it is private (i.e. it does not need to be filed with the registrar along with the declaration) but akin to articles of association in that it does not require the LLC, members and managers to be a party to it in order to be bound by its terms. Respondents should further note that the Draft Law provides for default positions should there be no LLC agreement provisions made (or in force).

#### Question 2:

- (a) Should the time at which the LLC agreement is deemed effective be: (a) as drafted i.e. as at the date of the certificate of formation or at another date specified in the LLC agreement (which reflects the US Law); or (b) simply "upon formation" being the time that the registrar issues a certificate of formation which therefore removes

the option to specify another date in the LLC agreement? It should be noted that Bermuda has adopted the former whilst Cayman Islands state LLC agreements entered into before filing only take effect upon registration (both permitting entry “before, after or at the time of filing”).

- (b) Do you envisage any issues with the concept that the LLC agreement may give rights to a third party (noting contractual concepts of privity)?
- (c) Do you believe there are any areas in the Draft Law where a default position should be but is not specified (i.e. in cases where an LLC agreement is either silent or for any reason not in force)? If so, please confirm which areas and what position you believe should be made the default and why.

#### **Article 4 – Registration of limited liability company**

6. This Article outlines the process for forming an LLC in Jersey, being in summary by the filing of a declaration (the form of which is to be agreed with the registrar in due course) confirming: the intended name of the LLC (which can be reserved in advance as for other Jersey entities); its intended registered office in Jersey; the name and address of each member (although it is not intended that this information be public); confirmation that the person signing is authorised to do so by all such members; and such other particulars as may be prescribed. If the declaration is complete and the registrar is satisfied, the registrar will register the LLC and issue a certificate of formation. Formation (and registration) is stated to take effect upon the issue of that certificate of formation, which shall specify the date on which it is issued and provide a registration number (we also expect an LLC to be issued with a COBO consent upon formation, the standard form of which is to be determined in due course together with all other regulatory requirements).

#### **Article 5 – Amendment of declaration**

7. This Article outlines the requirement and process for amending the declaration (other than a change of registered office) whether due to an error or change in details; being in summary the filing of an amendment statement within 21 days of the change or members/managers becoming aware of the error.

#### **Article 6 – Cancellation of registration**

8. This Article provides for the cancellation of the registration of an LLC by the registrar where a winding up or *en désastre* has been completed (with subordinate regulations pertaining thereto to be made separately, rather than included as part of this Draft Law

together with (it is anticipated) amendments to Article 36 of the Bankruptcy (*Désastre*) Jersey Law 1990).

**Note 4:**

Respondents should note that the Draft Law mirrors much of the process for registering an LLP and that, in this respect, the Jersey LLC is specifically intended to differ from the US Law. The US Law permits an LLC to be formed simply upon the filing of a certificate of formation whereas the Draft Law refers to that document instead as a declaration with the registrar issuing a certificate of formation if satisfied that the requirements of the Draft Law are met. Therefore, under the Draft Law, the LLC is formed at the time the certificate of formation is issued and not beforehand. The certificate of formation is therefore intended as conclusive evidence that a declaration has been delivered to the registrar, the LLC is formed and the requirements of registration have been complied with, which is in keeping with the processes for other Jersey entities. Respondents should also note that the Draft Law mirrors the registrar's actions in terms of a Jersey company, being that it shall maintain both a register of declarations and a register of LLCs.

The Chief Minister's Department considers that the above approach is appropriate, bringing it in line with the registration processes for other Jersey entities. It provides the registrar with the usual discretions to refuse, whilst not causing any significant delays. It also give certainty as to the date an LLC comes into existence. By comparison, it should be noted that Bermuda and Cayman Islands have adopted the US Law approach.

Whilst cancellation of an LLC is also addressed in this Article, the intention is that (as for LLPs) provisions regarding the dissolution and winding-up (and other related processes) are to be legislated separately (and the Draft Law provides for regulation making powers to address this point; we anticipate that Article 36 of the Bankruptcy (*Désastre*) Jersey Law 1990 will also need amending). However, as drafted, it should be noted that, as for Jersey LLPs, a "certificate of cancellation" is to be deemed as conclusive evidence of the cancellation of an LLC.

**Question 3:**

- (a) Do you agree with the approach taken above to align the registration process with that of other entities in Jersey or believe it should follow the US Law instead?
- (b) Do you agree that provisions regarding the dissolution and winding-up (and any other related processes) should be legislated separately?

- (c) Do you envisage any issues with the classification of LLCs with regards to any insolvency or similar processes? If so, please provide your reasoning.

**Article 7 – Name of limited liability company**

9. This Article outlines, amongst other requirements: the naming requirements (must end with “Limited Liability Company”, “L.L.C.” or “LLC”); the process for reserving names and the registrar’s discretion to reject (or require the LLC to change) such name if felt misleading or undesirable; that a change of name takes effect upon an amended certificate of formation being issued by the registrar; and a requirement that the LLC clearly state on its documentation its name, number and status as an LLC (with failure to comply being an offence).

**Article 8 – Registered office**

10. This Article outlines the requirement of a registered office in Jersey; the ability to change the registered office by giving notice to the registrar (made effective upon such notice being registered by the registrar but with service valid on the previous address for 14 days), the discretion of the registrar to refuse to register a change of registered office if for any reason the registrar believes the occupier of the premises has not authorised such use; a requirement that the LLC keep (and keep up to date) at its registered office certain records relating to the LLC and its members and managers including registers thereof (in alphabetical order); the LLC formation documents, the LLC agreement (and each amendment thereto); all contributions (including agreements to contribute) and LLC interests; with a provision that those records are to be treated as *prima facie* evidence of the information therein and available for inspection by all members and managers and (upon request) the registrar (within 14 days and failure to comply being an offence).

**Article 9 – Service of documents on limited liability company**

11. This Article simply provides that service may be effected by post or delivery to the registered office of the LLC.

**Note 5:**

As for registration, the naming, registered office and service provisions above are intended to follow established Jersey practices here rather than the US Law. As mentioned in Note 1, respondents should note that the US Law has a definition (and concept) of a “registered agent”, which has not been included in the Draft Law. The role

is not the same as a company secretary or administrator (the requirements to maintain, for example, the registers of managers and members, falls on the LLC itself, not the registered agent); rather it is the method by which the US Law seeks to ensure a genuine registered office and presence in the jurisdiction (by requiring a regulated person/entity to provide a registered office and be responsible for service of process on the LLC and communications between the managers and members).

By comparison: Bermuda requires a Bermuda resident for service of process (and maintaining financial statements) if the registered office of the LLC is not that of a licensed corporate service provider; and the Cayman Islands require that a person providing a registered office to an LLC must consent and hold an appropriate license. With regards to other Jersey vehicles: LLPs (under the new 2017 legislation) must appoint a secretary, who must be an LLP partner with a registered office in Jersey or a person licensed to act; Jersey limited companies must appoint a company secretary; and Jersey incorporated limited partnerships ("**ILPs**") have no requirement for such a registered agent or secretary, however each is required under their respective Jersey statute to have a registered office in Jersey. For the moment, the position adopted in the Draft Law therefore mirrors that of Jersey ILPs (a requirement for a Jersey registered office with no separate secretary/registered agent) with service of process to simply be effected by delivery to that registered office.

Respondents should note it is intended that the requirement for an LLC to use a licensed Jersey financial services business (including with regards to the provision of registered office and other services) will not be addressed through this consultation and that there are ongoing discussions with the Jersey Financial Services Commission concerning appropriate amendments to the Financial Services (Jersey) Law 1998.

**Question 4:**

- (a) Do you agree with the omission of the requirement for a US-style registered agent in favour of mirroring established Jersey practices?
- (b) Do you have any comments with regards to the Draft Law (or proposed future regulations/orders) providing for a regulated entity to be appointed to provide a registered office or any other services (for example, as a manager)?
- (c) Do you agree that the records of the LLC should be open to all members and managers of an LLC or do you believe this (for example) should be subject to the LLC agreement?

**Article 10 – Series of members, managers, LLC interests or assets**

12. This Article allows for the establishment of one or more designated “series” of members, managers, LLC interests or assets which may have separate legal personality, rights, powers or duties with respect to specified property or liabilities of the LLC, or profits and losses associated with specified property or liabilities, and that any such series may have a separate business purpose or investment objective and hold property in its own name (i.e. the creation of a series is essentially a ring-fencing exercise performed by the LLC which benefits from the protections of these provisions if done correctly).
13. This Article is also currently drafted without the need for the separate, distinct registration of a series. However, respondents should note this is not to be mistaken for Government position: the current drafting is simply intended to demonstrate the US Law position as a starting point for consultation on a potential registration process for a Jersey series (if series are desired at all); and that, despite such questions concerning registration, the Government’s Policy on beneficial ownership of corporate entities and legal entities would apply to any series of an LLC as it would to the LLC itself.

**Note 6:**

These provisions are some of the most innovative (and therefore still developing) features of LLCs. Indeed, whilst they are based on section 18-215 of the US law (specific Jersey additions have been made regarding status, name and registered office), we note that they are subject to much commentary in the US. Respondents should also note that Bermuda and Cayman Islands chose not to include series in their respective LLC laws.

The advantages of the ability to create series mirror those for creating cells in Jersey cell companies: an LLC is able to ring-fence groups of assets and liabilities from each other without needing to create a completely separate LLC to achieve the same result (and therefore avoid the cost and time associated). However, the US Law provisions (and as explained above, the current version of the Draft Law) permit the LLC to create and administer series without needing to individually register them. As outlined above, as a matter of Jersey policy (and in light of international regulatory standards), we have specifically raised the question of registration below and welcome responses accordingly.

Respondents will also note that the questions below focus more on the creation of series rather than its governance provisions. This is because the latter largely mirror those for the LLC itself (and are therefore covered elsewhere in this consultation) but respondents

are welcome to comment. Respondents should also note a series is stated as having its own separate legal personality without being specified as a body corporate for the same reasons as for the LLC itself in Note 2.

**Question 5:**

- (a) Do you agree with the concept that LLCs should be permitted to create series? Please explain your reasoning.
- (b) Do you agree that LLCs should not be permitted to create series without being required to individually register them (and obtain a separate certificate of formation / appropriate regulatory consents)? If so, do you have any views / preferences on that registration process (for example, should it mirror that of the LLC itself / Jersey cell companies)?
- (c) Do you agree that, as for the LLC, a series should be stated as having separate legal personality without being a body corporate?
- (d) Do you believe the naming provisions to provide sufficient notice to third parties (including creditors) that they are dealing with a ring-fenced element of the LLC? If not, what would you suggest instead or in addition to those provisions?
- (e) What (if any) market purposes do you believe the ability to create series would benefit and therefore should be considered when legislating for them (for example, do you believe the ability to create separate series for separate funds would be desirable and therefore the legislation take into account any specific fund law related requirements)?

**Part 3 – Members**

Part 3 comprises Articles 11 to 18 and deals with matters relating to members.

**Article 11 – Admission of members and LLC interests**

14. This Article provides that initial members shall be admitted upon the later of the issuance of the certificate of formation and the time provided in the LLC agreement (or if no time is provided, when the admission is reflected in the records of the LLC); and thereafter that members shall be admitted in the manner specified in the LLC agreement (or, if that is not specified, with the consent of all members and at the time the records of the LLC

are updated to reflect), with admitted members bound by the LLC agreement without any need to execute it.

15. This Article further provides that a member: may be admitted as a member and receive an LLC interest (or be granted other rights) without making a contribution (or being liable to do so); be admitted as a member without acquiring an LLC interest; may be admitted as a sole member without making a contribution (or being liable to do so) or acquiring an LLC interest; shall, subject to the LLC agreement, not have any pre-emptive right to subscribe for any issue of LLC interests; and may have their LLC interests evidenced by a certificate, which shall be proof of that LLC interest but such certificate shall not be a bearer certificate capable of transferring title (and any attempt to do shall be void). LLC interests are also confirmed as movable property with each member having no interest in any specific LLC property.

**Note 7:**

These provisions take their influence from sections 18-301, 18-302, 18-701 and 18-702 of the US Law. By comparison, respondents will note that it is a key requirement for LLPs that the partners contribute "something of value", which is intended to satisfy Jersey customary law and the English law criteria for a partnership so that transparency can be achieved. As per Note 2, this approach is not taken with LLCs, members of which may therefore have the status of a member without contributing or indeed having an LLC interest (although practitioners are free to draft the LLC agreement to require otherwise).

**Question 6:**

Other than the issues already identified with respect to satisfying transparency criteria in certain jurisdictions, do you envisage any issues with the concept that members may be admitted without either a requirement to contribute or receiving an LLC interest (noting contractual concepts of consideration)?

**Article 12 - Classes of members**

16. This Article permits the LLC agreement to provide for classes or groups of members and for them to have such relative rights, powers and duties as it may provide; and to make provision for the future creation of such (including rights, powers and duties senior to existing classes and groups of members).

**Article 13 – Meetings of members**

17. This Article permits an LLC agreement to determine the notice, timing, place and purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

**Article 14 – Voting of members**

18. This Article permits an LLC agreement to provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or class of LLC interest or group of members; provide any member or class or group of members to have no voting rights; grant to all or certain identified members or a specified class of LLC interest or group of members the right to vote separately or with all or any class of LLC interest or group of members or managers, on any matter; and for voting to be on a per capita, number, financial interest, class, group or any other basis.

19. This Article further provides that, subject to an LLC agreement or except as otherwise provided in the Law, any vote of members shall be passed if passed by a simple majority in number of the members entitled to vote on the matter in proportion to the then current percentage or other interest of members in the profit of the limited liability company owned by all of the members, but where that results in no members with a right to vote or provide consent, the members may vote or consent by a simple majority. Written resolutions are also, subject to the LLC agreement, permitted and may be passed by the same majority, as are proxies and electronic transmission of consent.

**Note 8:**

These provisions take their influence from section 18-302 of the US Law. By comparison, respondents will note that: the Jersey LLP law has no equivalent provision with regards to a default voting position; companies pass resolutions by a simple majority and special resolutions by a two-thirds majority basis (unless the articles of association specify otherwise); and that Cayman Islands provide for votes of LLC members to be passed by a simple majority of their number.

**Question 7:**

Do you agree that the default voting position for members should be in proportion to their interest in the profits of the LLC as per the US Law (and for written resolutions to be passed by that same majority) rather than by other method (and noting that the LLC agreement may provide otherwise)?

**Article 15 – Ceasing to be a member on insolvency or death**

20. This Article provides for a member, subject to the LLC agreement or with the consent of all members, to cease be a member on insolvency; and (in case of death or incompetence or a company) a personal representative to be able to exercise that member's rights.

**Article 16 – Liability to third parties**

21. This Article provides that, except as otherwise provided by the Draft Law, the debts and other liabilities of an LLC, whether arising in contract, tort or otherwise, shall be solely the debts and other liabilities of the LLC, and neither a member nor a manager of an LLC shall be personally liable for any such debt or other liability of the LLC solely by reason of being a member or acting as a manager of the limited liability company; although notwithstanding, a member or manager may, in accordance with the LLC agreement or otherwise, agree to be liable personally.

**Article 17 – Member may bind limited liability company**

22. This Article provides that, subject to the LLC agreement, a member shall have the authority to bind the LLC.

**Article 18 – Resignation of member**

23. This Article permits a member to resign from and cease to be a member only at the time or upon the happening of events specified in an LLC agreement and in accordance with the LLC agreement, as otherwise provided in the Draft Law or with the consent of all of the other members.

**Note 9:**

These provisions take their influence from sections 18-303, 18-304 and 18-603 of the US Law with the addition of, if the LLC agreement is silent, the consent of all other members (an approach also taken by the Cayman Islands). Articles 16 and 17 each reflect a key feature of the LLC: that the LLC is a separate entity distinct from its members (with separate legal personality) but that (subject to the LLC agreement) each of its members may bind the LLC (akin to partners)

**Question 8:**

Do you agree (or envisage any issues with the drafting) that subject to the LLC agreement:

- (a) insolvency should trigger the cessation of membership; and
- (b) each member should have the authority to bind the LLC (noting below that the management of the LLC may vest in managers (where appointed) or with a specified group of members if so specified in the LLC agreement)?

**Part 4 – Managers**

Part 4 comprises Articles 19 to 26 and makes provision for matters relating to the management of LLCs.

**Article 19 – Management of limited liability company**

24. This Article provides that the LLC agreement may permit for the management of the LLC to be by a manager (or managers); that if a manager is appointed, the management of the LLC shall vest in that manager to the extent provided (and otherwise in its members); that, subject to the LLC agreement, each manager appointed shall have the authority to bind the LLC; and that, subject to the Draft Law, a manager ceases to be a manager only as provided in the LLC agreement.

**Question 9:**

Given that the definition of “manager” includes “a member in whom the management of a limited liability company is vested”, are there any activities that you believe should be specifically excluded as “management business” so as to avoid a member being classified

as a manager simply by partaking in such tasks? If so, do you believe the Draft Law to be the proper place for such activities are do you believe that should be housed in activity specific regulation?

No such exclusions exist in the US Law but, for example, we note section 6A of The Legislative Reform (Limited Partnerships) Order 2015 of England and Wales provides that a limited partner in a private fund limited partnership is not to be regarded as taking part in the management of the partnership business merely because the limited partner does anything that is under subsection (2) therein a permitted activity, which in turn includes taking part in decisions about the variation of the partnership agreement and certain investment decisions.

#### **Article 20 – Contributions by manager**

25. This Article provides that a manager may also participate in the LLC as a member.

#### **Note 10:**

These provisions take their influence from sections 18-401, 18-402 and 18-403 of the US Law. Respondents will note they provide for an LLC to decide whether it is managed by its members (each potentially having LLC interests and therefore akin to partners/shareholders) or manager(s) (being more akin to directors), with a person (including a corporate entity) permitted to be both.

#### **Article 21 – Classes of managers**

26. This Article permits the LLC agreement to provide for classes or groups of managers and for them to have such relative rights, powers and duties as it may provide; and to make provision for the future creation of such (including rights, powers and duties senior to existing classes and groups of managers).

#### **Article 22 – Meetings of managers**

27. This Article permits an LLC agreement to determine the notice, timing, place and purpose of any meeting at which any matter is to be voted on by any managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

**Article 23 – Voting of managers**

28. This Article permits an LLC agreement to provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any manager or class or group of managers; grant to all or certain identified managers or a specified class or group of managers the right to vote separately or with all or any class or group of members or managers, on any matter; and for voting to be on a per capita, number, financial interest, class, group or any other basis.
29. This Article further provides that, subject to an LLC agreement or except as otherwise provided in the Law, any vote of members shall be passed if passed by a simple majority in number of the members entitled to vote on the matter in proportion to the then current percentage or other interest of members in the profit of the limited liability company owned by all of the members, but where that results in no members with a right to vote or provide consent, the members may vote or consent by a simple majority. Written resolutions are also, subject to the LLC agreement, permitted and may be passed by the same majority, as are proxies and electronic transmission of consent.

**Note 11:**

These provisions take their influence from sections 18-404 and 18-405 of the US Law with the addition that, if the LLC agreement is silent on the issue, votes shall be decided on a simple majority of votes (an addition also adopted by Bermuda). Respondents will note these mirror the equivalent provisions for members (and in turn those for those of managers of series).

**Article 24 – Reliance on information, reports etc. by member, manager or liquidator**

30. This Article provides for a member, manager or liquidator to be protected in relying in good faith upon the records of the LLC and upon information, opinions, reports or statements presented by another manager, member or liquidator, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidator reasonably believes are within such other person's professional or expert competence.

**Article 25 – Delegation of rights and powers to manage**

31. This Article provides that, subject to the LLC agreement, a member or a manager has the power to delegate their rights and powers to manage and control the business and affairs of the LLC.

**Article 26 – Resignation of manager**

32. This Article provides: for the resignation of a manager of an LLC at the time or upon the happening of events specified in the LLC agreement and in accordance with the LLC agreement; that an LLC agreement may provide that a manager shall not have the right to resign as a manager; that, notwithstanding any such prohibition, a manager may still resign at any time by giving written notice to the members and other managers but (in addition to any remedies otherwise available under applicable law) an LLC may recover damages for breach of the LLC agreement and offset those against the amount that may otherwise be distributable to the resigning manager (if any).

**Note 12:**

These provisions take their influence from sections 18-406, 18-407 and 18-601 of the US Law. Respondents will note that the Draft Law ensures that the LLC agreement may be drafted with significant flexibility.

**Part 5 - Finance**

Part 5 comprises Articles 27 to 30 and makes provisions for financial matters.

**Article 27 – Form of contribution**

33. This Article permits the contribution of a member to an LLC to be in the form of cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

**Article 28 – Liability for contribution**

34. This Article provides that: subject to the LLC agreement, a member is liable to the LLC to perform any promise to contribute cash or property or to perform services, even if unable because of death, disability or any other reason; that the LLC may require cash equal to the agreed value of the property or services that have not been provided; and

that such obligation to contribute may only be comprised by the consent of all members (subject to the LLC agreement) but that, notwithstanding any such compromise, a creditor of the LLC who extends credit before that compromise may enforce the original obligation to the extent that the creditor can be said to have reasonably relied on that member being obligated to contribute. A conditional obligation to contribute is also stated as not being enforceable until the relevant conditions have been met.

**Note 13:**

These provisions reflect sections 18-501 and 18-502 of the US Law. Respondents will note that, in addition to contributions not being an absolute requirement (again, the LLC agreement can provide differently), where a contribution is required from a member it is permitted to take the form of cash, property or services (or the promise to provide the same) with LLPs by comparison requiring “skill and effort” as an alternative to capital. It should also be noted that, whilst Bermuda reflects the US Law provision regarding creditors being permitted to enforce original obligations where they have extended credit on the basis of those obligations, whereas Cayman Islands has chosen not to include equivalent wording in their LLC legislation.

**Question 10:**

- (a) Other than the issues already identified with respect to satisfying transparency criteria in certain jurisdictions, do you envisage any difficulties in the terminology used with respect to contributions? If so, please explain.
- (b) Do you believe the Draft Law should include the ability of creditors to enforce original obligations (or that it should be subject to any specific limitations)? If not, please provide your reasoning.

**Article 29 – Allocation of profit and losses**

35. This Article provides for the profits and losses of an LLC to be allocated among the members and among classes or groups of members in the manner provided by the LLC agreement or, if the LLC agreement does not provide, on the basis of the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent received and not returned by the LLC.

#### **Article 30 – Allocation of distributions**

36. This Article provides for the allocation of distributions of cash or other assets of an LLC among the members and among classes or groups of members in the manner provided by the LLC agreement or, if the LLC agreement does not provide, on the basis of the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent received and not returned by the LLC.

#### **Note 14:**

These provisions reflect sections 18-503 and 18-504 of the US Law with profits and losses and distributions to be divided as per the LLC agreement or otherwise in proportion to contributions. Respondents will note that the LLP law similarly provides for profits to be divided but does not give a default position (and does not have a separate provision regarding distributions).

#### **Part 6 – Distributions**

Part 6 comprises Articles 31 to 35 and makes provisions for distributions.

#### **Article 31 - Payment of distributions**

37. This Article allows for the LLC agreement to provide for payment of distributions in such manner, time and form, including distributions in cash and in kind and for the establishment of a record date with respect to distributions by an LLC.

#### **Article 32 – Distributions upon resignation**

38. This Article entitles a member upon resignation to receive any distribution to which such member is entitled pursuant to the LLC agreement and, subject to the LLC agreement (and within a reasonable time after resignation), the fair value of such member's LLC interest as of the date of resignation based on their right to share in distributions.

#### **Article 33 – Distribution in kind**

39. This Article provides that, subject to the LLC agreement: a member, regardless of the nature of their contribution, has no right to demand and receive any distribution from an LLC in any form other than cash; and that a member may not be compelled to accept a distribution of any asset in kind from an LLC to the extent that the percentage of the asset

distributed exceeds (although they may be compelled to the extent that the percentage of the asset distributed is equal) a percentage of that asset which is equal to the percentage in which the member shares in distributions from the LLC.

**Article 34 – Right to distribution**

40. This Article provides for a member to have (subject to the Draft Law and the LLC agreement) the status of, and be entitled to all remedies available to, a creditor of an LLC with respect to the distribution at the time a member becomes entitled to receive a distribution.

**Article 35 – Limitation on distribution**

41. This Article prohibits an LLC from making a distribution to a member if, at the time when and immediately after payment is made, the LLC is insolvent, with a member receiving such a distribution and having actual knowledge of it being in contravention of this provision being liable for it.

**Note 15:**

These provisions reflect sections 18-604 to 18-607 of the US Law. Respondents will note, in particular, Article 35, which requires that LLCs simply be solvent at the time a distribution is made for it to be permissible. By comparison, ILPs have a similar wording but LLPs require partners to sign a formal solvency statement on a 12-month-look-forward basis (to be later filed with the registrar). Companies also have a similar process to LLPs under article 115 of the Companies (Jersey) Law 1991. Furthermore, in order for an LLC member to be liable to return a distribution where the LLC is in fact insolvent, "actual" knowledge is a pre-requisite of such liability; whereas for partners in an LLP, the liability to return a distribution arises where a specified solvency statement was not made or where one was made without reasonable grounds for giving it.

**Question 11:**

Do you envisage any issues with adopting the US Law position with regards to distributions as drafted i.e. that the LLC is simply required to be solvent at the time of the distribution and for members to be liable to return distributions only where those members had actual knowledge that the LLC was insolvent at the time?

### **Part 7 Assignment of LLC interest**

Part 7 comprises Articles 36 to 43 and makes provision for the assignment of an LLC interest.

#### **Article 36 – Assignment of LLC interest**

42. This Article provides for an LLC interest to be assignable in whole or in part, subject to the LLC agreement (which may provide that an LLC interest may not be assigned at all prior to the dissolution and winding up of the LLC).

#### **Note 16:**

These provisions reflect sections 18-603 and 18-702 of the US Law. Respondents will note by comparison that partners of an LLP may not assign, transfer or otherwise dispose of the whole or part of their interests other than in accordance with the LLP agreement.

#### **Article 37 – Assignee right to participate in management of a limited liability company**

43. This Article provides that the assignee of an LLC interest not admitted as a member shall have no right to participate in the management of the LLC except as provided by the LLC agreement or otherwise by the consent of all members.

#### **Article 38 – Assignee right to exercise rights and powers of a member**

44. This Article provides that subject to the LLC agreement an assignment of an LLC interest does not entitle the assignee to become or to exercise any rights or powers of a member but does entitle the assignee to share in such profits and losses, receive such distribution or distributions, and receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned.

#### **Article 39 – No liability solely as a result of the assignment**

45. This Article provides that, subject to the LLC agreement and except to the extent assumed by agreement, until an assignee of an LLC interest becomes a member, the assignee has no liability as a member solely as a result of the assignment.

**Article 40 – Ceasing of rights of member on assignment**

46. This Article provides that (subject to the LLC agreement) a member ceases to be a member (and ceases to have any rights or powers as such) upon the assignment of their entire LLC interest. However: the granting of security in respect of an LLC interest does not qualify as such an assignment; and, whether or not an assignee becomes a member, the assignor is not released from their liability to the LLC for their contribution or for their liability to return a distribution received with knowledge that the LLC was insolvent.

**Article 41 – Right of assignee to become member**

47. This Article gives an assignee the right to become a member in respect of the assigned LLC interest if permitted in the LLC agreement and in accordance with the terms of the LLC agreement or otherwise with the approval of all members of the LLC.

**Article 42 – Rights, powers and liabilities of assignee upon becoming a member**

48. This Article provides that an assignee who has become a member has, to the extent assigned and transferred, the rights, powers, restrictions and liabilities of a member contained in the LLC agreement, the Draft Law and any other enactment. Notwithstanding, unless the LLC agreement specifies otherwise, such an assignee is to be liable for the obligations of the assignor to make contributions (unless they were unknown to the assignee at the time and could not be ascertained from the LLC agreement) but is not liable for any other obligations of the assignor with regard to distributions.

**Article 43 – Acquisition by limited liability company of interest of member of manager**

49. This Article provides (subject to the LLC agreement) for the acquisition by an LLC of an LLC interest by purchase, redemption or otherwise, if immediately following the acquisition, the LLC would be able to pay its debts as they fall due; and that any such LLC interest would be deemed cancelled upon acquisition.

**Note 17:**

These provisions reflect sections 18-702 (and 18-607), 18-704 and 18-705 of the US Law. With regards to the acquisition of LLC interests by the LLC, respondents will note by comparison that LLPs have no equivalent provision though limited companies may purchase their own shares under Part 11 of the Companies (Jersey) Law 1991 (generally

permitted and authorised by special resolution). Respondents should also note that the US law has no requirement for the LLC to be able to pay its debts as they fall due, rather it is a condition that was inserted by both Bermuda and Cayman Islands in their respective laws and (when drafting) felt appropriate from a policy perspective to include here, particularly given the solvency requirement for distributions.

**Question 12:**

Do you agree that the requirement of the LLC to be solvent at the time it intends to acquire an LLC interest should be included or do you believe the Draft Law should instead reflect the US Law (which has no such requirement)?

**Part 8 – Miscellaneous and final provisions**

Part 8 comprises Articles 44 to 61 which deal with customary law, duties and miscellaneous provisions relevant to the Draft Law.

**Article 44 - Rules of customary law**

50. This Article provides for the rules of customary law applicable to partnerships to apply to LLCs except insofar as they are inconsistent with the express provisions of the Draft Law or the nature of an LLC including that the liability of its members is limited to their contributions and that it is managed by it may be managed by one or managers who may or may not be members.

**Note 18:**

Whilst it may appear counter-intuitive to apply the customary law of partnerships to an entity referred to as a limited liability company, this is in fact consistent with the approach taken to follow the closest jurisdictional equivalent of the LLP elsewhere in the Draft Law (for example, by providing the LLC with separate legal personality without it being a body corporate). As explained in Note 2, this “quirk” results from the US not sharing our meaning of “company”, which can be thought of as more of a term (like “business”) that can in certain circumstances equally apply to incorporations (what we would generally think of as companies), partnerships and LLCs (which are considered as hybrids) alike.

This Article therefore seeks to echo the approach of the customary law provision of the LLP law i.e. to confirm the intention that LLCs are to be treated as partnerships except as expressly provided by the Draft Law. By comparison, the Cayman Islands (which as stated in Note 2, takes the approach of designating the LLC as a body corporate) has an equivalent provision of applying its common and equity law as applicable to companies to LLCs except insofar as inconsistent with the express provisions of their LLC law.

**Question 13:**

Do you believe there are any material issues with LLCs being said to be treated as a partnerships except as prescribed in the Draft Law (or related legislation) notwithstanding their name refers to them as companies? If so, please provide details.

**Article 45 - Fiduciary and other duties not owed**

51. This Article provides that, subject to the LLC agreement, a manager shall not owe any duty (fiduciary or otherwise) to the LLC or any member of the LLC (or any other person) in respect of the LLC other than a duty to act in good faith in respect of the rights, authorities or obligations which are exercised or performed or to which such manager is subject in connection with the management of the LLC provided that such duty of good faith may be expanded or restricted by the express provisions of the LLC agreement.
52. This Article further provides that, subject to the LLC agreement (and this Article) a member shall not owe any duty (fiduciary or otherwise) to the LLC or any member in exercising any of its rights or authorities in respect of the LLC or in performing any of its obligations pursuant to the LLC agreement to the LLC or any member, and where such member is exercising any vote, consent or approval right in respect of its LLC interest it may exercise such vote, consent or approval in its own best interests as it sees fit even though it may not be in the best interest of the LLC.

**Note 19:**

These provisions reflect 18-1101 of the US Law. Whilst care needs to be taken when comparing the US application of good faith and fiduciary duties with our own, the US Law clearly specifies that the intention is to give maximum effect to the principle of freedom of contract and to the enforceability of LLC agreements.

**Question 14:**

- (a) Do you believe it agreeable that the LLC agreement should have the freedom to determine all duties (fiduciary or otherwise) of managers (which includes managing members) other than a general duty to act in good faith (which may be restricted or expanded); or (for example) should duties be mandatorily included via legislation (for example, aligning to the position for directors in Articles 74-76 of the Companies Law and customary law)? If the latter, which duties do you believe should be included?
- (b) Do you believe it otherwise agreeable that members (when not engaging in management) may similarly owe no duties and may vote contrary to the interests of the LLC, subject to the LLC agreement?

**Note 20:**

The following provisions have been drafted for (amongst other objectives): the appointment of the registrar and role of the Commission; the collection of annual fees (to be confirmed but for comparison, the US Law specifies USD300 p.a.); the prescription of forms of documents to be provided or kept in accordance with the Draft Law; for subordinate legislation to be passed (including for the winding up of an LLC); offences; penalties; and commencement. We have not raised specific questions in respect of them as they should be self-evident Jersey provisions but none-the-less outline their content here and welcome any comments respondents may have generally.

**Article 46 – Appointment and functions of registrar**

53. This Article confirms that the registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991 is the registrar of LLCs; requires the registrar to maintain a register of LLCs 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; that any certificate issued by the registrar under the Law must be signed by the registrar and sealed with the registrar's seal (if any); 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 LLCs; that any functions of the registrar under the Draft Law may, to the extent authorised by the registrar, be exercised by an officer on the staff of the Commission; that the registrar has 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 LLC or is inaccurate, or is derived from something that is inaccurate or forged; and that before exercising its power to remove material from the register, the registrar must publish its 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.

**Article 47 – Annual administration fee**

54. This Article gives the Commission the power to require the payment to it by an LLC of an annual administration fee; that the annual administration 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. The States is also empowered by Regulations to provide that, in addition to the annual administration fee, an LLC must pay to the Commission annually such amount as the States determines in the Regulations.

**Article 48 – Fees, charges and forms**

55. This Article provides that the Commission may require the payment to it of fees in respect of the performance by the registrar of his or her functions under the Draft Law or a charge for the provision by the registrar of any service, advice, or assistance, or a document or information; that 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; that where a fee is payable in respect of the performance of a function by the registrar, the registrar does not need take any action until the fee is paid; that where the fee is payable on the receipt by the registrar of a document required to be delivered to the registrar, the registrar would be taken not to have received the document until the fee is paid; and that 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 delivered or authenticated.

**Article 49 – Form of documents to be delivered to registrar**

56. This Article makes provision for the form and manner in which documents are to be delivered to registrar.

**Article 50 – Inspection and production of documents kept by registrar**

57. This Article provides for the inspection and production of documents kept by registrar

**Article 51 – Destruction of old records**

58. This Article provides for the destruction by the registrar of records of an LLC that has been dissolved, at any time after 10 years from the date of the dissolution; and that after 10 years from the dissolution of an LLC no responsibility rests on a member, manager or a person to whom custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

**Article 52 – Form of LLC's records**

59. This Article makes provision for the form in which records of the LLC may be kept; that an LLC is required to take reasonable precautions to prevent loss or destruction of, to prevent falsification of entries in and to facilitate detection and correction of inaccuracies in, the records required to be kept; and that an LLC that fails to comply with any the requirements is guilty of an offence and liable to a fine of level 4 on the standard scale.

**Article 53 – Registration in the Public Registry**

60. This Article requires the Judicial Greffier to register in the Public Registry all Acts and orders affecting immovable property made under the Law.

**Article 54 – Offences of giving false or misleading etc. information**

61. This Article creates an offence for giving false or misleading information.

**Article 55 – Criminal liability of partners, directors and other offices**

62. This Article makes provision for the criminal liability of partners, directors and other officers of partnerships with separate legal personality and bodies corporate.

**Article 56 – Limitation of liability**

63. This Article provides for the limitation of liability of the States; the Minister or any person who is, or is acting as, an officer, employee or agent in an administration of the States for which the Minister is assigned responsibility; the Commission, any Commissioner or any person who is, or is acting as, an officer, employee or agent of the Commission; and the registrar, the deputy registrar, an assistant registrar or any person who is, or is acting as, an officer, employee or agent of the registrar, and that the limitation of liability does

not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

**Article 57 – Penalties**

64. This Article provides general penalties for certain offences under the Law (with the penalties under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993 being level 1 £200, level 2 £1000 and level 3 £10,000).

**Article 58 – Regulations**

65. This Article gives the States the power by Regulations to make such provision as the States thinks fit for the purposes of carrying the Law into effect; and that the Regulations may provide for various matters including the creation of offences, mergers of LLCs and the winding up and dissolution of solvent and insolvent LLCs or a series established under Article 10.

**Article 59 – Orders**

66. This Article gives the Chief Minister the power by Order make provision prescribing any matter that is to be prescribed under the Draft Law; and that an Order may contain such incidental provisions as the Minister may consider to be necessary or expedient and the Minister must consult the Commission before making any Order.

**Article 60 – Rules of Court**

67. This Article 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 61 – Citation and commencement**

68. This Article provides for the Draft Law to be cited as the “Limited Liability Companies (Jersey) Law 201-“ and provides for it to come into force on such day or days as the States may by Act appoint.

## Questions

In summary, the questions raised on the Draft Law are as follows:

### Question 1:

- (a) Do you agree that there is market for LLCs in Jersey for the purposes of targeting US (and EU equivalent) business notwithstanding that certain jurisdictions (e.g. England and Wales) may not recognise them as transparent entities for the purposes of taxation and they are therefore unlikely to be used (at least directly) in transactions involving such jurisdictions? If so, what do you envisage a Jersey LLC being used for (e.g. within an investment fund structure)? Please be as specific as possible.
- (b) Do you agree that Jersey should have an LLC law in place in order to market to the UK if the English law (and HMRC) position changes so as to readily recognise LLCs as transparent entities (if so elected)?
- (c) Based on current drafting, do you believe that a Jersey LLC would give rise to any actual or potential risks to Jersey? If so, please explain such risks.
- (d) Do you agree with the approach that a Jersey LLC should be designated as an entity with separate legal personality rather than a body corporate? If not, please explain your reasoning.
- (e) Do you agree that an LLC should have the right to elect to be treated for tax purposes as either a company or as a partnership? If so, do you believe there should be a default position under law (and if so, do you agree that the default position should be to be treated as a partnership i.e. transparent as per the US Law)?
- (f) Do you agree with an LLC agreement being able to provide for perpetual succession? Please explain the reasons for your response.
- (g) Do you agree that it is not necessary for the Draft Law to require that an LLC must "carry on a business" with "a view to a profit" (noting that the LLC agreement may provide otherwise)?

**Question 2:**

- (a) Should the time at which the LLC agreement is deemed effective be: (a) as drafted i.e. as at the date of the certificate of formation or at another date specified in the LLC agreement (which reflects the US Law); or (b) simply “upon formation” being the time that the registrar issues a certificate of formation which therefore removes the option to specify another date in the LLC agreement? It should be noted that Bermuda has adopted the former whilst Cayman Islands state LLC agreements entered into before filing only take effect upon registration (both permitting entry “before, after or at the time of filing”).
- (b) Do you envisage any issues with the concept that the LLC agreement may give rights to a third party (noting contractual concepts of privity)?
- (c) Do you believe there are any areas in the Draft Law where a default position should be but is not specified (i.e. in cases where an LLC agreement is either silent or for any reason not in force)? If so, please confirm which areas and what position you believe should be made the default and why.

**Question 3:**

- (a) Do you agree with the approach taken above to align the registration process with that of other entities in Jersey or believe it should follow the US Law instead?
- (b) Do you agree that provisions regarding the dissolution and winding-up (and any other related processes) should be legislated separately?
- (c) Do you envisage any issues with the classification of LLCs with regards to any insolvency or similar processes? If so, please provide your reasoning.

**Question 4:**

- (a) Do you agree with the omission of the requirement for a US-style registered agent in favour of mirroring established Jersey practices?
- (b) Do you have any comments with regards to the Draft Law (or proposed future regulations/orders) providing for a regulated entity to be appointed to provide a registered office or any other services (for example, as a manager)?

- (c) Do you agree that the records of the LLC should be open to all members and managers of an LLC or do you believe this (for example) should be subject to the LLC agreement?

**Question 5:**

- (a) Do you agree with the concept that LLCs should be permitted to create series? Please explain your reasoning.
- (b) Do you agree that LLCs should not be permitted to create series without being required to individually register them (and obtain a separate certificate of formation / appropriate regulatory consents)? If so, do you have any views / preferences on that registration process (for example, should it mirror that of the LLC itself / Jersey cell companies)?
- (c) Do you agree that, as for the LLC, a series should be stated as having separate legal personality without being a body corporate?
- (d) Do you believe the naming provisions to provide sufficient notice to third parties (including creditors) that they are dealing with a ring-fenced element of the LLC? If not, what would you suggest instead or in addition to those provisions?
- (e) What (if any) market purposes do you believe the ability to create series would benefit and therefore should be considered when legislating for them (for example, do you believe the ability to create separate series for separate funds would be desirable and therefore the legislation take into account any specific fund law related requirements)?

**Question 6:**

Other than the issues already identified with respect to satisfying transparency criteria in certain jurisdictions, do you envisage any issues with the concept that members may be admitted without either a requirement to contribute or receiving an LLC interest (noting contractual concepts of consideration)?

**Question 7:**

Do you agree that the default voting position for members should be in proportion to their interest in the profits of the LLC as per the US Law (and for written resolutions to be passed by that same majority) rather than by other method (and noting that the LLC agreement may provide otherwise)?

**Question 8:**

Do you agree (or envisage any issues with the drafting) that subject to the LLC agreement:

- (a) insolvency should trigger the cessation of membership; and
- (b) each member should have the authority to bind the LLC (noting below that the management of the LLC may vest in managers (where appointed) or with a specified group of members if so specified in the LLC agreement)?

**Question 9:**

Given that the definition of “manager” includes “a member in whom the management of a limited liability company is vested”, are there any activities that you believe should be specifically excluded as “management business” so as to avoid a member being classified as a manager simply by partaking in such tasks? If so, do you believe the Draft Law to be the proper place for such activities are do you believe that should be housed in activity specific regulation?

No such exclusions exist in the US Law but, for example, we note section 6A of The Legislative Reform (Limited Partnerships) Order 2015 of England and Wales provides that a limited partner in a private fund limited partnership is not to be regarded as taking part in the management of the partnership business merely because the limited partner does anything that is under subsection (2) therein a permitted activity, which in turn includes taking part in decisions about the variation of the partnership agreement and certain investment decisions.

**Question 10:**

- (a) Other than the issues already identified with respect to satisfying transparency criteria in certain jurisdictions, do you envisage any difficulties in the terminology used with respect to contributions? If so, please explain.
- (b) Do you believe the Draft Law should include the ability of creditors to enforce original obligations (or that it should be subject to any specific limitations)? If not, please provide your reasoning.

**Question 11:**

Do you envisage any issues with adopting the US Law position with regards to distributions as drafted i.e. that the LLC is simply required to be solvent at the time of the distribution and for members to be liable to return distributions only where those members had actual knowledge that the LLC was insolvent at the time?

**Question 12:**

Do you agree that the requirement of the LLC to be solvent at the time it intends to acquire an LLC interest should be included or do you believe the Draft Law should instead reflect the US Law (which has no such requirement)?

**Question 13:**

Do you believe there are any material issues with LLCs being said to be treated as a partnerships except as prescribed in the Draft Law (or related legislation) notwithstanding their name refers to them as companies? If so, please provide details.

**Question 14:**

- (a) Do you believe it agreeable that the LLC agreement should have the freedom to determine all duties (fiduciary or otherwise) of managers (which includes managing members) other than a general duty to act in good faith (which may be restricted or expanded); or (for example) should duties be mandatorily included via legislation

(for example, aligning to the position for directors in Articles 74-76 of the Companies Law and customary law)? If the latter, which duties do you believe should be included?

- (b) Do you believe it otherwise agreeable that members (when not engaging in management) may similarly owe no duties and may vote contrary to the interests of the LLC, subject to the LLC agreement?

**General comments**

We invite any comments respondents may have on the Draft Law generally, including in respect of the regulation points identified in the outline of this consultation.



Jersey

## LIMITED LIABILITY COMPANIES (JERSEY) LAW 201-

### Report

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DISCUSSION DRAFT ONLY AND READY NOT FOR LODGING

### Explanatory Note

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This Law provides for the establishment and regulation of limited liability companies (as defined in *Article 1*).

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

Part 2 of the Law comprises *Articles 2 to 10* which set out the essential elements of a limited liability company.

*Article 2* provides that a limited liability company may be formed for any lawful business, purpose or activity, whether or not for profit. A limited liability company has legal personality that is separate from that of its members and shall be dissolved and have its affairs wound up only pursuant to the LLC agreement (as defined in *Article 1*) or by the Law or another enactment. A limited liability company has unlimited capacity and possesses and may exercise all powers and privileges granted by the LLC agreement, this Law or other enactment together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

Under *Article 2*, a limited liability company must consist of one or more persons who are members and if appointed, one or more persons who are managers. A body corporate may be a member or manager of a limited liability company and a person may be a member and a manager at the same time in the limited liability company. Subject to the LLC agreement, a limited liability company may indemnify and hold harmless any member or manager or other person from and against any and all claims and demands.

Under *Article 3*, an LLC agreement must be entered into (or otherwise existing) before, after or at the time of delivery of a declaration to the Registrar and may be made effective as of the date of the certificate of formation or such other date as specified in the LLC agreement. A limited liability company is not required to execute its LLC agreement and is bound by its terms whether or not it executes it. A member or manager or an assignee of an LLC interest of a limited liability company is bound by the LLC agreement (which shall be enforceable) whether or not the member manager or assignee

executes the LLC agreement. An LLC agreement may provide rights to a third party and such third party shall be entitled to enforce such rights notwithstanding that they are not a party to the LLC agreement. If an LLC agreement provides for the manner in which it may be amended, it may be amended only in that manner or as otherwise permitted by this Law and if the LLC agreement is silent as to the manner of amendment it may be amended with the unanimous approval of all members or as otherwise permitted by Law. *Article 3* also makes provision for remedies, sanctions and consequences for breach of an LLC agreement.

*Article 4* provides for the registration of a limited liability company and for a certificate of formation to be issued on registration. The limited liability company is formed on the date of issue of the certificate of formation. The registration of a limited liability company has effect from the date of issue of its certificate of formation and ceases to have effect upon the cancellation of registration of the limited liability company in accordance with *Article 6*.

*Article 5* makes provision for amendments of a declaration so that if during the continuance of limited liability company, a manager, or if there is no manager, any member becomes aware that any statement in a declaration was false when, or that any change (other than a change in the registered office of limited liability company) is made or occurs in respect of any of the particulars of the declaration delivered to the registrar, an amendment statement signed by an authorized person specifying the nature of the change shall, within 21 days of (as applicable) such manager or member becoming aware of the false statement or of the date of the change be delivered to the registrar. Upon delivery of an amendment statement if the registrar is satisfied that the change complies with the requirements of this Law, the registrar shall register the amendment statement and issue to the limited liability company an amended certificate of formation giving effect to the change and in accordance with *Article 46(3)* the certificate of formation shall be signed by the registrar and sealed with the registrar's seal (if any). A limited liability company that fails to send the amendment statement specifying the change would be guilty of an offence.

*Article 6* makes provision for the cancellation of registration of a limited liability company.

*Article 7* provides for the name of a limited liability company to end with the words "Limited Liability Company" in full or any of the abbreviations "LLC" or "L.L.C."

*Article 7* also makes provision for the reservation of the name of a limited liability company and for a change of name of a limited liability company. A change of name of a limited liability company would not affect any rights or liabilities of the limited liability company 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. A limited liability company must 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 company its name, any number or other identifying code assigned to it by the registrar and the words "registered as a limited liability company in Jersey".

*Article 8* requires that a limited liability company must have a registered office in Jersey at which certain records relating to the limited liability company and its members and managers must be kept.

*Article 9* provides for the service of a document on a limited liability company to be effected by sending it by post or delivering it to the registered office of the limited liability company.



*Article 10* allows for the establishment of one or more designated series of members, managers, LLC interests or assets, each of which shall have a legal personality separate from that of its members, the limited liability company and any other series thereof. Each series may also have separate rights, powers or duties with respect to specified property or liabilities of the limited liability company, or profits and losses associated with specified property or liabilities, and any such series may have a separate business purpose or investment objective.

Part 3 of the Law comprises *Articles 11 to 17* which deal with matters relating to members.

*Article 11* provides for the admission of members and LLC interests.

*Article 12* permits an LLC agreement to provide for classes or groups of members having such relative rights, powers and duties as the LLC agreement may provide, and to make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members.

*Article 13* permits an LLC agreement to set provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

*Article 14* provides that an LLC agreement may provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or class of LLC interest or group of members. An LLC agreement may also provide any member or class or group of members shall have no voting rights and may grant to all or certain identified members or a specified class of LLC interest or group of members the right to vote separately or with all or any class of LLC interest or group of members or managers, on any matter and voting by members may be on a per capita, number, financial interest, class, group or any other basis. Subject to an LLC agreement or except as otherwise provided in the Law, any vote of members shall be passed if passed by a simple majority in number of the members entitled to vote on the matter in proportion to the then current percentage or other interest of members in the profit of the limited liability company owned by all of the members, but where that results in no members with a right to vote or provide consent, the members may vote or consent by a simple majority.

*Article 14* also provides that subject to an LLC agreement –

- (a) any matter that is to be voted on, consented to or approved by members may be dealt with without a meeting, without prior notice and without a vote by consent in writing, signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted;
- (b) if a person (whether or not then a member), consenting as a member to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), such a person shall be deemed to have consented as a member at such future time so long as such a person is then a member;
- (c) on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means

of electronic communication or as otherwise permitted by the LLC agreement; and

- (d) a consent transmitted by electronic communication by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of *Article 14*.

*Article 15* makes provision for a member to cease to be a member on the insolvency or death of the member and gives the personal representative of a deceased or incompetent member the power to exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under an LLC agreement of an assignee to become a member. If a member is a body corporate, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

*Article 16* makes provision for the debts and other liabilities of a limited liability company, whether arising in contract, tort or otherwise, to be solely the debts and other liabilities of the limited liability company, and neither a member nor manager of a limited liability company is or would be liable personally for any such debt or other liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company. A member or manager may, in accordance with the LLC agreement or otherwise, agree to be liable personally for any or all of the debts and other liabilities of the limited liability company.

Under *Article 17*, subject to the LLC agreement, each member is given the authority to bind the limited liability company.

*Article 18* permits a member to resign from and cease to be a member of a limited liability company only at the time or upon the happening of events specified in an LLC agreement and in accordance with the LLC agreement, as otherwise provided in this Law or with the consent of all of the other members.

Part 4 of the Law comprises *Articles 19 to 26* which make provision for matters relating to managers.

*Article 19* provides for the management of a limited liability company so that an LLC agreement may provide for the management of a limited liability company by a manager and provide for the appointment of a person as a manager of a limited liability company. A limited liability company may have more than one manager and, subject to the LLC agreement, each manager has the authority to bind the limited liability company.

*Article 20* entitles a manager to may make contributions to the limited liability company and to share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, subject to the LLC agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

Under *Article 21*, an LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers.

*Article 22* makes provision for the procedures for meetings of managers.



*Article 23* provides for the taking of an action, without the vote or approval of any manager or class or group of managers and for the right of managers to vote on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis. Subject to the LLC agreement, any matter to be decided by a vote of the managers or class or group of managers, is decided on a simple majority of votes.

*Article 24* makes provision for a member manager or liquidator to be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidator, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidator reasonably believes are within such other person's professional or expert competence.

*Article 25* gives a member or a manager the power to delegate his or her rights and powers to manage and control the business and affairs of the limited liability company.

*Article 26* provides for the resignation of a manager of a limited liability company at the time or upon the happening of events specified in the LLC agreement and in accordance with the LLC agreement. An LLC agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that an LLC agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager contravenes the LLC agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the LLC agreement and offset the damages against the amount otherwise distributable to the resigning manager.

Part 5 of the Law comprises *Articles 27 to 30* which makes provisions for financial matters.

*Article 27* provides that the contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Under *Article 28*, subject to the LLC agreement, a member is liable to the limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason.

*Article 29* provides for the profits and losses of a limited liability company among the members and among classes or groups of members.

*Article 30* provides for the allocation of distributions of cash or other assets of a limited liability company among the members and among classes or groups of members.

Part 6 of the Law comprises *Articles 31 to 35* which provide for distributions and assignments by a limited liability company.

*Article 31*, allows for the LLC agreement to provide for payment of distributions in such manner, time and form, including distributions in cash and in kind and for the establishment of a record date with respect to distributions by a limited liability company.

*Article 32* entitles a member upon resignation to receive any distribution to which such member is entitled pursuant to the LLC agreement and, subject to the LLC agreement, the member is entitled to receive, within a reasonable time after resignation, the fair

value of such member's LLC interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

Under *Article 33*, subject to the LLC agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Subject to the LLC agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company. However, subject to the LLC agreement a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

*Article 34* provides for a member to have the status of, be entitled to, all remedies available to a creditor of a limited liability company with respect to the distribution at the time a member becomes entitled to receive a distribution, subject to *Article 35*, the Regulations made under *Article 58(2)(e)* and the LLC agreement.

*Article 35* imposes a limitation on a distribution so that a limited liability company is prohibited from making a distribution to a member if, at the time when and immediately after payment is made, the limited liability company is insolvent.

Part 7 of the Law comprises *Articles 36 to 43* which makes provision for the assignment of LLC interest.

*Article 36* provides for the LLC interest to be assignable in whole or in part, subject to the LLC agreement. An LLC agreement may provide that an LLC interest may not be assigned prior to the dissolution and winding up of the limited liability company.

Under *Article 37*, the assignee of an LLC interest not admitted as a member has no right to participate in the management of the business and affairs of a limited liability company, subject to the LLC agreement, upon the vote or consent of all of the members of the limited liability company.

*Article 38* provides that subject to the LLC agreement an assignment of an limited LLC interest does not entitle the assignee to become or to exercise any rights or powers of a member and an assignment of an LLC interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned.

Under *Article 39*, subject to the LLC agreement and except to the extent assumed by agreement, until an assignee of an LLC interest becomes a member, the assignee has no liability as a member solely as a result of the assignment.

*Article 40* provides (subject to the LLC agreement) for the ceasing of rights of member on assignment upon assignment of all of the member's LLC interest but the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the LLC interest of a member would not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member. Whether or not an assignee becomes a member, the assignor is not released from liability to the limited liability company under *Articles 26(1) and 36(3)*.

*Article 41* gives an assignee the right to become a member in respect of the assigned LLC interest if permitted in the LLC agreement and in accordance with the terms of the LLC agreement or subject to the LLC agreement, with the approval of all of the members of the limited liability company.



*Article 42* makes provision for the rights, powers and liabilities of assignee upon becoming a member to be in accordance with the terms of the LLC agreement, the law and any other applicable enactment.

*Article 43* provides for the acquisition by the limited liability company of any LLC interest or other interest of member or manager by purchase, redemption or otherwise, if immediately following the acquisition, the LLC would be able to pay its debts as they fall due and any such interest so acquired by the limited liability company would be deemed cancelled. The right of acquisition is subject to the LLC agreement.

Part 8 of the Law comprises *Articles 44 to 61* which are miscellaneous provisions.

*Article 44* provides for the rules of customary Law applicable to partnerships to apply to limited liability companies except in so far as they are inconsistent with the express provisions of the Law or the nature of a limited liability company.

*Article 45* provides that, subject to any express provisions of an LLC agreement to the contrary, a manager shall not owe any duty (fiduciary or otherwise) to the limited liability company or any member or any other person in respect of the limited liability company other than a duty to act in good faith in respect of the rights, authorities or obligations which are exercised or performed or to which such manager is subject in connection with the management of the limited liability company provided that such duty of good faith may be expanded or restricted by the express provision of the LLC agreement.

*Article 45* also provides that, subject to any express provision of the LLC agreement to the contrary, the members of a limited liability company would not owe any duty (fiduciary or otherwise) to the limited liability company or any member of the limited liability company in exercising any of its rights or authorities in respect of the limited liability company or in performing any of its obligations pursuant to the LLC agreement to the limited liability company or any member, and where such member is exercising any vote, consent or approval right in respect of its LLC interest it may exercise such vote, consent or approval in its own best interests as it sees fit even though it may not be in the best interest of the limited liability company.

*Article 46* confirms that the registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991 is the registrar of limited liability companies. *Article 47(2)* requires the registrar to maintain a register of limited liability companies 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. Any certificate issued by the registrar under the Law must be signed by the registrar and sealed with the registrar's seal (if any) and *Article 47(4)* 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 companies. 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. The registrar has 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 company or is inaccurate, or is derived from something that is inaccurate or forged. Before exercising power to remove material from the register, the registrar must publish its 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.

*Article 47* gives the Commission the power to require the payment to it by a limited liability company of an annual administration fee. The annual administration 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. The States is also empowered by Regulations to provide that, in addition to the annual administration fee, a limited liability company must pay to the Commission annually such amount as the States determines in the Regulations.

By *Article 48*, the Commission may require the payment to it of fees in respect of the performance by the registrar of his or her functions under this Law or a charge for the provision by the registrar of any service, advice, or assistance, or a document or information. 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. Where a fee is payable in respect of the performance of a function by the registrar, the registrar does not need take any action until the fee is paid. Where the fee is payable on the receipt by the registrar of a document required to be delivered to the registrar, the registrar would be taken not to have received the document until the fee is paid. 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 delivered or authenticated.

*Article 49* makes provision for the form and manner in which documents are to be delivered to registrar.

*Article 50* provides for the inspection and production of documents kept by registrar

*Article 51* provides for the destruction by the registrar of records of a limited liability company that has been dissolved, at any time after 10 years from the date of the dissolution. After 10 years from the dissolution of a limited liability company no responsibility rests on a member, manager or a person to whom custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

*Article 52* makes provision for the form in which records that a limited liability company is required by this Law to keep may be kept. A limited liability company is required to take reasonable precautions to prevent loss or destruction of, to prevent falsification of entries in; and to facilitate detection and correction of inaccuracies in, the records required to be kept and a limited liability company that fails to comply with any the requirements is guilty of an offence and liable to a fine of level 4 on the standard scale.

*Article 53* requires the Judicial Greffier to register in the Public Registry all Acts and orders affecting immovable property made under the Law.

*Article 54* creates an offence for giving false or misleading information.

*Article 55* makes provision for the criminal liability of partners, directors and other officers of partnerships with separate legal personality and bodies corporate.

*Article 56* provides for the limitation of liability of the States; the Minister or any person who is, or is acting as, an officer, employee or agent in an administration of the States for which the Minister is assigned responsibility; the Commission, any Commissioner or any person who is, or is acting as, an officer, employee or agent of the Commission; and the registrar, the deputy registrar, an assistant registrar or any person who is, or is acting as, an officer, employee or agent of the registrar. The limitation of liability does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

*Article 57* provides general penalties for certain offences under the Law.

*Article 58* gives the States the power by Regulations to make such provision as the States thinks fit for the purposes of carrying the Law into effect. The Regulations may



provide for various matters including the creation of offences, mergers of limited liability companies and the winding up and dissolution of solvent and insolvent limited liability companies or a series established under *Article 10*.

*Article 59* gives the Chief Minister the power by Order make provision prescribing any matter that is to be prescribed under this Law. An Order may contain such incidental provisions as the Minister may consider to be necessary or expedient and the Minister must consult the Commission before making any Order.

*Article 60* 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 61* provides for the law to be cited as the Limited Liability Companies (Jersey) Law 201- and provides for it to come into force on such day or days as the States may by Act appoint.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £200, level 2 is £1000 and level 3 is £10,000.





Jersey

## LIMITED LIABILITY COMPANIES (JERSEY) LAW 201-

### Arrangement

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#### Article

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Jersey

## LIMITED LIABILITY COMPANIES (JERSEY) LAW 201-

A **LAW** to provide for the establishment and regulation of limited liability companies, 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 –

“authorized person” means a person who is authorized in writing by every person who is a member of the limited liability company;

“certificate of formation” means the certificate issued under Article 4(5);

“Commission” means the Jersey Financial Services Commission established under the Financial Services Commission (Jersey) Law 1998;

“contribution” means any cash, property, other assets, services rendered or other obligation to contribute cash, property, other assets or to perform service, which a person contributes to a limited liability company in the person’s capacity as a member, but does to include any money’s lent or agreed to be lent to a limited liability company;

“declaration” means the declaration delivered to the registrar under Article 3 (including all amendments made to the declaration);

“distribution” shall be construed in accordance with Article 31(1);

“electronic communication” has the meaning given by Article 1(1) of the Electronic Communications (Jersey) Law 2000;

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

“LLC agreement”, means any agreement, written, oral or implied, of a member or the members as to the affairs of a limited liability company and the conduct of its business and any amendments or additions made to the LLC agreement;

“LLC interest” means a member’s share of the profits and losses of a limited liability company, a member’s right to receive distributions the limited liability company’s assets, and any other rights, benefits and obligations conferred by the LLC agreement or this Law;

“Minister” means the Chief Minister;

“manager” means a person appointed as such, or a member in whom the management of a limited liability company is vested, under Article 18;

“member” means a person who is admitted as member of a limited liability company under Article 11;

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

“register” means the register to be maintained under Article 46(2);

“registrar” shall be construed in accordance with Article 46;

“registered office” shall be construed in accordance with Article 8.

- (2) The Minister may by Order amend this Article.

## **PART 2**

### **FORMATION, REGISTRATION ETC. OF LIMITED LIABILITY COMPANY**

#### **2 Limited liability company**

- (1) Subject to the provisions of this Law, a limited liability company may be formed for any for any lawful business, purpose or activity, whether or not for profit.
- (2) A limited liability company has legal personality that is separate from that of its members.
- (3) A limited liability company shall be dissolved and have its affairs wound up only pursuant to the LLC agreement or by this Law or another enactment.
- (4) A limited liability company has unlimited capacity and shall possess and may exercise all powers and privileges granted by the LLC agreement, this Law or other enactment together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.
- (5) A limited liability company shall consist of –
  - (a) one or more persons who are members; and



- (b) if appointed, one or more persons who are managers.
- (6) A body corporate may be a member or manager of a limited liability company.
- (7) A person may be a member and a manager at the same time in the limited liability company.
- (8) Subject to the LLC agreement, a member or manager may –
  - (a) lend money to;
  - (b) borrow money from;
  - (c) act as surety, grantor or endorser for; or
  - (d) guarantee or assume one or more obligations of, provide collateral for, and transact other business with,  
a limited liability company and, subject to other applicable law has the same rights and obligations with respect to any such matter as a person who is not a member or manager.
- (9) Subject to the LLC agreement, a limited liability company may indemnify and hold harmless any member or manager or other person from and against and all claims and demands.

### **3 LLC agreement generally**

- (1) An LLC agreement shall be entered into (or otherwise existing) before, after or at the time of delivery of a declaration to the Registrar and may be made effective as of the date of the certificate of formation or at such other date as specified in the LLC agreement.
- (2) Notwithstanding anything in the LLC agreement to the contrary, a limited liability company registered and formed under this Law shall be governed by the law of Jersey.
- (3) A limited liability company is not required to execute its LLC agreement and is bound by its terms whether or not it executes it.
- (4) A member or manager or an assignee of an LLC interest of a limited liability company is bound by the LLC agreement (which shall be enforceable) whether or not the member manager or assignee executes the LLC agreement.
- (5) An LLC agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the LLC agreement.
- (6) An LLC agreement may provide rights to a third party and such third party shall be entitled to enforce such rights notwithstanding that they are not a party to the LLC agreement.
- (7) If an LLC agreement provides for the manner in which it may be amended, it may be amended only in that manner or as otherwise permitted by this Law and if the LLC agreement is silent as to the manner of amendment it may be amended with the unanimous approval of all members or as otherwise permitted by this Law.

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- (8) An LLC agreement may provide that a member or a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the LLC agreement shall be subject to remedies, sanctions, penalties or consequences specified in the LLC agreement.
  - (9) An LLC agreement may provide that upon the happening of an event specified in the LLC agreement, a member or manager shall be subject to remedies, sanctions, penalties or consequences specified in the LLC agreement.
  - (10) Any remedies, sanctions, penalties or consequences referred to in paragraphs (9) and (10) shall not be unenforceable solely on the basis that they are in the nature of a penalty or forfeiture.

#### **4 Registration of limited liability company**

- (1) An application for registration of a limited liability company shall be in the form of a declaration, made and signed by an authorized person and shall be delivered to the registrar by such method or in such form as may be required by the registrar.
- (2) A declaration shall state the following particulars –
  - (a) the name of the limited liability company;
  - (b) the address of the registered office of the limited liability company;
  - (c) the name and address of each member;
  - (d) that the person making the declaration is authorized to do so by every person intending to be a member on the proposed registration date; and
  - (e) such other particulars as may be prescribed.
- (3) A declaration shall be accompanied by such documents as may be prescribed.
- (4) The registrar shall maintain a register of all declarations.
- (5) If the registrar is satisfied that –
  - (a) an application made under paragraph (1) complies with paragraphs (2) and (3); and
  - (b) the proposed name of the limited liability company complies with Article 7 and that the requirement for a registered office under Article 8 is complied with,the registrar shall register the limited liability company and issue a certificate of formation to the limited liability company.
- (6) The certificate of formation shall specify –
  - (a) the date on which the certificate of formation is issued; and
  - (b) any number or other identifying code allocated by the registrar to the limited liability company; andin accordance with Article 47(3) shall be signed by the registrar and sealed with the registrar's seal (if any).
- (7) A certificate of formation is conclusive evidence that –

- (a) a declaration has been delivered to the registrar;
  - (b) the limited liability company is incorporated under this Law;
  - (c) the requirements of this law have been complied with in respect of –
    - (i) registration,
    - (ii) all matters precedent to registration, and
    - (iii) all matters incidental to registration,in respect of the limited liability company.
- (8) The registration of a limited liability company shall have effect from the date of issue of its certificate of formation and shall cease to have effect upon the cancellation of registration of the limited liability company in accordance with Article 6.

## **5 Amendment of declaration**

- (1) If during the continuance of limited liability company, a manager or, if there is no manager, any member becomes aware that any statement in a declaration was false when made, or that any change (other than a change of the registered office of limited liability company) is made or occurs in respect of any of the particulars of the declaration delivered to the registrar, an amendment statement signed by an authorized person specifying the nature of the change shall, within 21 days of (as applicable) such a manager or member becoming aware of the false statement or of the date of the change, be delivered to the registrar.
- (2) Subject to Article 7, upon delivery of an amendment statement under paragraph (1), if the registrar is satisfied that the change complies with the requirements of this Law, the registrar shall register the amendment statement and issue to the limited liability company an amended certificate of formation giving effect to the change and in accordance with Article 46(3) the certificate of formation shall be signed by the registrar and sealed with the registrar's seal (if any).
- (3) A limited liability company that fails to send the amendment statement referred to in paragraph (1) in accordance with that paragraph shall be guilty of an offence.

## **6 Cancellation of registration**

- (1) The registrar shall cancel the entry in the register relating to the limited liability company 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 company pursuant to Regulations made under Article 58(2)(e); or
  - (b) the registrar has been notified under Article 36(2) of the Bankruptcy (Désastre) (Jersey) Law 1990.
- (2) On cancelling a limited liability company's registration under paragraph (1) the registrar shall publish a notice of that fact.

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- (3) A certificate of cancellation of a limited liability company's registration issued by the registrar under paragraph (1) is conclusive evidence as to the cancellation of the registration of the limited liability company.
  - (4) Despite paragraph (3), where the registration of a limited liability company has been cancelled under this Article, on an application made by –
    - (a) a person who was a member immediately before the cancellation; or
    - (b) any other person appearing to the Court to be interested,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 company and all other persons in the same position as nearly as may be as if the registration of the limited liability company 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.

## **7 Name of limited liability company**

- (1) The name of a limited liability company shall end with the words "Limited Liability Company" in full or any of the abbreviations "LLC" or "L.L.C."
- (2) An application to reserve the name of a limited liability company may be made by an authorized person and delivered to the registrar in the prescribed form stating the proposed name of the limited liability company and the registrar may reserve that name for the exclusive use of the applicant.
- (3) The registrar may refuse to register a declaration, an amendment statement or reserve the name of a limited liability company where the name to be registered is in the registrar's opinion in any way misleading or otherwise undesirable.
- (4) If, in the opinion of the registrar, the name by which a limited liability company has been registered is misleading or otherwise undesirable, the registrar may direct the limited liability company to change it.
- (5) Subject to paragraph (6), the limited liability company 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 company 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 company shall comply with the direction; and
    - (b) may order the registrar to pay the limited liability company such sum (if any) as it thinks fit in respect of the expenses to be incurred by the limited liability company 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 company shall take effect upon an amended certificate of formation in respect of it being issued by the registrar under Article 5(2).
  - (9) A change of name of a limited liability company does not affect any rights or liabilities of the limited liability company 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 company 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 company shall deliver to the Judicial Greffier a copy of the certificate issued by the registrar pursuant to Article 5(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 company 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 company –
    - (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 company in Jersey”.
  - (13) A limited liability company that fails to comply with paragraph (5), (10) or (12) shall be guilty of an offence.

## **8 Registered office**

- (1) A limited liability company shall have a registered office in Jersey.
- (2) A limited liability company does not comply with paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being that the premises may be used as the registered office of the limited liability company.
- (3) Subject to paragraphs (4) and (5), a limited liability company may change the address of its registered office from time to time by giving notice to the registrar.

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- (4) A change of the address of the registered office of a limited liability company shall take effect on notice given under paragraph (3) being registered by the registrar, but until the end of the period of 14 days beginning on the date on which it is registered, a person may validly serve any document on the limited liability company at its previous registered office.
  - (5) The registrar may refuse to register a notice given under paragraph (3), if he or she is not satisfied that the occupier of the premises that are to be the registered office of the limited liability company authorizes the use of the premises as the registered office of the limited liability company.
  - (6) A limited liability company shall keep at its registered office the following records –
    - (a) a document containing a list of the name and addresses of each member and manager of the limited liability company;
    - (b) a copy of the declaration;
    - (c) a copy of any other statement delivered to the registrar under this Law;
    - (d) a copy of the certificate of formation and any other certificate issued by the registrar under this Law;
    - (e) a copy of the LLC agreement and each amendment made to it;
    - (f) a statement of the amount of any contributions agreed to be made by each member and the time at which, or events on the happening of which, the contributions are to be made;
    - (g) a statement of the amount of money and nature and value of any other property or services contributed by each member and the dates that the contributions were made;
    - (h) a statement of the amount of contributions returned to members the dates that the contributions were made; and
    - (i) such other particulars as may be prescribed.
  - (7) 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; and
    - (b) available for inspection and copying without charge at the limited liability company's registered office, during the ordinary business hours of the limited liability company, at the request of a member or manager.
  - (9) The limited liability company 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 company 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 company that fails to comply with the requirements of paragraph (6), (7), (8)(b), (9) or (10) shall be guilty of an offence.

## **9 Service of documents on limited liability company**

The service of a document on a limited liability company may be effected by sending it by post or delivering it to the registered office of the limited liability company.

## **10 Series of members, managers, LLC interests or assets.**

- (1) An LLC agreement may establish or provide for the establishment of one or more designated series of members, managers, LLC interests or assets, each of which shall have legal personality separate from that of its members, the limited liability company and any other series thereof.
- (2) The name of a series shall be the name of the limited liability company followed by “Series”, in turn followed by a name or number, or both, that clearly distinguishes that series from any other of the same limited liability company.
- (3) The registered office of the series shall be the registered office of the limited liability company and service of a document on a series may be effected by sending it by post or delivering it to that registered office.
- (4) A series established under paragraph (1) may have separate rights, powers or duties with respect to specified property or liabilities of the limited liability company or profits and losses associated with specified property or liabilities, and any such series may have a separate business purpose or investment objective.
- (5) In the event that an LLC agreement establishes or provides for the establishment of one or more series, and if the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series of the limited liability company, then subject to the LLC agreement and paragraph (6) –
  - (a) the debts, liabilities and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series of the limited liability company; and
  - (b) none of the debts, liabilities and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series of the limited liability company shall be enforceable against the assets of such series.
- (6) Paragraph (5) or any other provision pursuant to that paragraph in an LLC agreement shall not –
  - (a) restrict a series or limited liability company on behalf of a series from agreeing in the LLC agreement or otherwise that any or all of the debts, liabilities, and expenses incurred, contracted for or otherwise existing with respect to the limited liability company

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- generally or any other series thereof shall be enforceable against the assets of such series;
- (b) restrict a limited liability company from agreeing in the LLC agreement or otherwise that any or all of the debts, liabilities and expenses incurred, contracted for or otherwise existing with respect to a series shall be enforceable against the assets of the limited liability company generally; or
  - (c) prevent a member or manager agreeing in the LLC agreement, or otherwise, to be liable personally for any or all of the debts and other liabilities of one or more series.
- (7) Assets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise.
  - (8) Records maintained for a series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof.
  - (9) For the purposes of this Article, a reference to assets of a series includes assets associated with a series and a reference to assets associated with a series includes assets of a series.
  - (10) A series may carry on any lawful business, purpose or activity, whether or not for profit.
  - (11) Subject to an LLC agreement, a series shall have the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued.
  - (12) An LLC agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series.
  - (13) An LLC agreement may –
    - (a) provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create, pursuant to the LLC agreement, a class or group of the series of LLC interests that was not previously outstanding;
    - (b) provide that any member or class or group of members associated with a series shall have no voting rights;
    - (c) grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series

the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter,

and voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or any other basis.

- (14) Subject to the LLC agreement, the management of a series shall be vested in the members associated with such series in proportion to the then current percentage or other interest of members in the profits of the series owned by all of the members associated with such series (the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling), except that if the LLC agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the LLC agreement.
- (15) The manager of a series shall hold the offices and have the responsibilities accorded to the manager as set out in the LLC agreement.
- (16) A series may have more than one manager.
- (17) Subject to Article 26, a manager shall cease to be a manager with respect to a series as provided in an LLC agreement.
- (18) Subject to the LLC agreement, any event specified under this Law or in an LLC agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.
- (19) Notwithstanding Article 34, but subject to the LLC agreement, at the time a member associated with a series that has been established in accordance with paragraph (5) becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of the series, with respect to the distribution.
- (20) An LLC agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.
- (21) Notwithstanding Article 35, a limited liability company may make a distribution with respect to a series that has been established in accordance with paragraph (5).
- (22) Subject to paragraph (23), a limited liability company shall not make a distribution with respect to a series that has been established in accordance with paragraph (5) to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their LLC interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability.
- (23) For the purposes of paragraph (22), “distribution” shall not include amounts constituting reasonable compensation for present or past services

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or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

- (24) A member who receives a distribution in contravention of paragraph (22), and who knew at the time of the distribution that the distribution contravened this Article, shall be liable to the series for the amount of the distribution.
- (25) A member who receives a distribution in contravention of paragraph 22, and who did not know at the time of the distribution that the distribution contravened paragraph (22), shall not be liable for the amount of the distribution.
- (26) Subject to Article 35, which shall apply to any distribution made with respect to a series under this Article, this Article shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.
- (27) Subject to the LLC agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's LLC interest with respect to such series.
- (28) Subject to the LLC agreement, any event under this Law or the LLC agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.
- (29) The termination of a series established in accordance with paragraph (5) shall not affect the limitation on liabilities of such series provided by paragraph (5).

### **PART 3**

#### **MEMBERS AND LLC INTERESTS**

##### **11 Admission of members and LLC interests**

- (1) In connection with the formation of a limited liability company, a person is admitted as an initial member of the limited liability company upon the later to occur of –
  - (a) the issuance of the certificate of formation of the limited liability company; or
  - (b) the time provided in and upon compliance with the LLC agreement or, if the LLC agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.
- (2) After the formation of a limited liability company, a person may be admitted as a member of the limited liability company in the following circumstances –

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- (a) in the case of a person acquiring an LLC interest from, or being issued with an LLC interest by, the limited liability company, at the time provided in and upon compliance with the LLC agreement, or if the LLC agreement does not so provide, upon –
    - (i) the consent of all members, and
    - (ii) the person's admission being reflected in the records of the limited liability company;
  - (b) in the case of a assignee of an LLC interest, as provided in Article 41 and at the time provided in and upon compliance with the terms of the LLC agreement or, if the LLC agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company;
  - (c) in all other cases, at the time provided in and upon compliance with the LLC agreement, or if the LLC agreement does not so provide, upon –
    - (i) the consent of all members, and
    - (ii) the person's admission being reflected in the records of the limited liability company.
- (3) If the requirements for or conditions to an admission contained in the LLC agreement have been complied with in respect of a person (or, to the extent permitted by the LLC agreement, waived), any such person, howsoever admitted, shall without the requirement for any further actions or formalities, be deemed to have become a member and adhered to and agreed to be bound by the terms and conditions of the LLC agreement from that date as if that person and all existing members and any other parties to the LLC agreement had together duly executed and delivered the LLC agreement whether as a deed or otherwise.
  - (4) Subject to an LLC agreement, a person may be admitted to a limited liability company as a member of the limited liability company and may receive an LLC interest in or be granted other rights in respect of the limited liability company without making a contribution or being liable to make a contribution to the limited liability company.
  - (5) Subject to an LLC agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring an LLC interest in the limited liability company.
  - (6) Subject to an LLC agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being liable to make a contribution to the limited liability company or without acquiring an LLC interest in the limited liability company.
  - (7) Subject to an LLC agreement or any agreement with the limited liability company, a member shall have no pre-emptive right to subscribe for any issue of LLC interests or any other interest in a limited liability company.
  - (8) Subject to an LLC agreement, a member's LLC interest may (but need not) be evidenced by a certificate of LLC interest issued by the limited liability company.
  - (9) A certificate of LLC interest issued by or on behalf of a limited liability company specifying that a person is a member of that limited liability

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company (and specifying such additional information, if any, as the limited liability company may determine) and purportedly signed (including by an electronically affixed signature) with the express or implied authority of the limited liability company is admissible in evidence as proof of that person's membership of the limited liability company and as proof of that additional information in respect of that member's LLC interest as may have been included in the certificate by the limited liability company.

- (10) An LLC interest of a member in a limited liability company is movable property.
- (11) A member has no interest in any specific property of the limited liability company.
- (12) Notwithstanding any other provision of this Law, a limited liability company shall not issue bearer LLC interests, bearer certificates or bearer coupons and any issue or purported issue of such shall be void.
- (13) In paragraph (12), "bearer" means a document where title to the document or to what the document represents is transferred or purported to be transferred solely by delivery of such document.

## **12 Classes of members**

An LLC agreement may provide for classes or groups of members having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members.

## **13 Meetings of members**

- (1) An LLC agreement may make provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.
- (2) Unless otherwise provided in the LLC agreement, a meeting of members may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting.

## **14 Voting of members**

- (1) An LLC agreement may –
  - (a) provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or class of LLC interest or group of members;

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- (b) provide that any member or class or group of members shall have no voting rights;
  - (c) grant to all or certain identified members or a specified class of LLC interest or group of members the right to vote separately or with all or any class of LLC interest or group of members or managers, on any matter,  
and voting by members may be on a per capita, number, financial interest, class, group or any other basis.
- (2) Subject to an LLC agreement or except as otherwise provided by this Law, any vote of members shall be passed if passed by a simple majority in number of the members entitled to vote on the matter in proportion to the then current percentage or other interest of members in the profit of the limited liability company owned by all of the members, but where that results in no members with a right to vote or provide consent, the members may vote or consent by a simple majority.
  - (3) Subject to an LLC agreement, on any matter that is to be voted on, consented to or approved by members, the matter may be dealt with without a meeting, without prior notice and without a vote by consent in writing, signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted.
  - (4) Subject to the LLC agreement, if a person (whether or not then a member), consenting as a member to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), such a person shall be deemed to have consented as a member at such future time so long as such a person is then a member.
  - (5) Subject to an LLC agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic communication or as otherwise permitted by the applicable law.
  - (6) Subject to an LLC agreement, a consent transmitted by electronic communication by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this Article.

## **15 Ceasing to be a member on insolvency or death**

- (1) A person ceases to be a member of a limited liability company upon the happening of any of the following events –
  - (a) subject to an LLC agreement, or with the consent of all members, a member –
    - (i) makes an assignment for the benefit of creditors,
    - (ii) is insolvent or becomes bankrupt or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding,

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- (iii) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any enactment,
  - (iv) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature, or
  - (v) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or
- (b) subject to an LLC agreement, or with the consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any enactment if the proceeding has not been dismissed, or if within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.
- (2) If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, then the member's personal representative (or equivalent, as applicable) may exercise all of that member's rights for the purpose of settling the member's estate or administering the member's property, including –
- (a) any power under an LLC agreement of an assignee to become a member;
  - (b) exercising any rights of transfer in respect of all or part of the member's LLC interest.
- (3) If a member is a body corporate, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

## **16 Liability to third parties**

- (1) Except as otherwise provided by this Law, the debts and other liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts and other liabilities of the limited liability company, and neither a member nor a manager of a limited liability company shall be personally liable for any such debt or other liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.
- (2) Notwithstanding paragraph (1), a member or manager may, in accordance with the LLC agreement or otherwise, agree to be liable personally for any or all of the debts and other liabilities of the limited liability company.

**17 Member may bind limited liability company**

Subject to the LLC agreement, a member shall have the authority to bind the limited liability company.

**18 Resignation of member**

A member may resign from and cease to be a member of a limited liability company only at the time or upon the happening of events specified in an LLC agreement and in accordance with the LLC agreement or as otherwise provided in this Law or with the consent of all of the other members.

**PART 4****MANAGERS****19 Management of limited liability company**

- (1) An LLC agreement may –
  - (a) provide for the management of a limited liability company by a manager; and
  - (b) provide for the appointment of a person as a manager of a limited liability company.
- (2) If an LLC agreement provides for the management of a limited liability company by a manager and for the appointment of a person as a manager of a limited liability company in accordance with paragraph (1), the management of the LLC shall vest in that manager to the extent provided.
- (3) A manager shall hold the offices and have the responsibilities accorded to the manager by or in the manner provided in the LLC agreement.
- (4) Where the LLC agreement does not provide for the management of a limited liability company by a manager, the management of the limited liability company shall be vested in its members.
- (5) A limited liability company may have more than one manager.
- (6) Subject to the LLC agreement, each manager shall have the authority to bind the limited liability company.
- (7) Subject to this Law, a manager shall cease to be a manager only as provided in the LLC agreement.

**20 Contributions by manager**

- (1) A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member.
- (2) A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, subject

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to the LLC agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

## **21 Classes of managers**

An LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers.

## **22 Meetings of managers**

- (1) An LLC agreement may make provision relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.
- (2) Unless otherwise provided in the LLC agreement, a meeting of managers may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this paragraph shall constitute presence in person at the meeting.

## **23 Voting of managers**

- (1) An LLC agreement may –
  - (a) provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the LLC agreement a class or group of LLC interests that was not previously outstanding;
  - (b) grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter,and voting by managers may be on a per capita, number, financial interest, class, group or any other basis.
- (2) Subject to the LLC agreement and except as otherwise provided in this Law, any matter may be decided by a vote of the managers or class or group of managers shall be decided on a simple majority of votes.
- (3) Unless otherwise provided in the LLC agreement, on any matter that is to be voted on, consented to or approved by managers, the managers may take such action without a meeting, without prior notice and without a vote if consented to, in writing, by electronic communication or by any other means permitted by law, by managers having not less than the minimum

number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted.

- (4) Subject to the LLC agreement, if a person (whether or not then a manager) consenting as a manager to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a manager at such future time so long as such person is then a manager.
- (5) Subject to the LLC agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and such proxy may be granted in writing, by means of an electronic communication or as otherwise permitted by applicable law.
- (6) Subject to the LLC agreement, a consent transmitted by means of an electronic communication by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this Article.

#### **24 Reliance on information, reports etc. by member, manager or liquidator**

A member, manager or liquidator of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidator, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidator reasonably believes are within such other person's professional or expert competence including –

- (a) information, opinions, reports or statements as to –
  - (i) the value and amount of the assets, liabilities, profits or losses of the limited liability company, or
  - (ii) the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and liabilities of the limited liability company or to make reasonable provision to pay such claims and liabilities; or
- (b) any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

#### **25 Delegation of rights and powers to manage**

- (1) Subject to the LLC agreement, a member or manager of a limited liability company has the power and authority to delegate to one or more other persons their rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons.
- (2) Subject to the LLC agreement delegation by a member or manager under paragraph (1) –

- (a) shall be irrevocable if it states that it is irrevocable; and
- (b) shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager, as the case may be, of the limited liability company.

## **26 Resignation of manager**

- (1) A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in the LLC agreement and in accordance with the LLC agreement.
- (2) An LLC agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company.
- (3) Notwithstanding that an LLC agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers.
- (4) If the resignation of a manager contravenes the LLC agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the LLC agreement and offset the damages against the amount otherwise distributable to the resigning manager.

## **PART 5**

### **FINANCE**

## **27 Form of contribution**

The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

## **28 Liability for contribution**

- (1) Subject to the LLC agreement, a member is liable to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason.
- (2) If a member does not make the required contribution of property or services, the member is liable at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made.
- (3) The option to contribute cash under paragraph (2) shall be in addition to, and not in lieu of, any other rights, including the right to specific

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performance, that the limited liability company may have against such member pursuant to the LLC agreement or applicable law.

- (4) Subject to the LLC agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in contravention of this Article may be compromised only by consent of all the members.
- (5) Notwithstanding any such compromise under paragraph (4), a creditor of a limited liability company who extends credit, after the entering into of an LLC agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return.
- (6) A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member.
- (7) In this Article “conditional obligation” includes a contribution payable upon a discretionary call of a limited liability company prior to the time the call occurs.

### **29 Allocation of profit and losses**

The profits and losses of a limited liability company –

- (a) shall be allocated among the members, and among classes or groups of members, in the manner provided in the LLC agreement; or
- (b) if the LLC agreement does not provide for the allocation as in paragraph (a), profits and losses, shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

### **30 Allocation of distributions**

Distributions of cash or other assets of a limited liability company –

- (a) shall be allocated among the members, and among classes or groups of members, in the manner provided in the LLC agreement; or
- (b) if the LLC agreement does not provide for the allocation as in paragraph (a), distributions, shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

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## PART 6

### DISTRIBUTIONS

#### **31 Payment of distributions**

- (1) An LLC agreement may provide for the distribution of the assets of the limited liability company in such manner, time and form as provided therein, including distributions in cash and in kind.
- (2) An LLC agreement may provide for the establishment of a record date with respect to distributions by a limited liability company.

#### **32 Distributions upon resignation**

Except as otherwise provided in this Part, upon resignation any resigning member is entitled to receive any distribution to which such member is entitled pursuant to the LLC agreement and, if not otherwise provided in the LLC agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's LLC interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

#### **33 Distribution in kind**

- (1) Subject to the LLC agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash.
- (2) Subject to the LLC agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.
- (3) Subject to the LLC agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

#### **34 Right to distribution**

Subject to Article 35, the Regulations made under Article 58(2)(e) and the LLC agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to, all remedies available to a creditor of a limited liability company with respect to the distribution.

#### **35 Limitation on distribution**

- (1) Subject to paragraph (2), a limited liability company shall not make a distribution to a member if, at the time when and immediately after payment is made, the limited liability company is insolvent.



- (2) For the purposes of paragraph (1), “distribution” shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits programme.
- (3) A member who receives a distribution or is purportedly released from an obligation in contravention of paragraph (1), and who had actual knowledge at the time of the distribution or purported release that the distribution or release contravened paragraph (1), shall be liable to the limited liability company for the amount of the distribution or for performance of the obligation purportedly released.
- (4) Subject to any express provision of the LLC agreement to the contrary, a member who receives a distribution or is released from an obligation in contravention of paragraph (1) and who did not have actual knowledge at the time of the distribution or release that the distribution or release contravened paragraph (1) shall, notwithstanding paragraph (1), not be liable for the amount of the distribution or for performance of the obligation released.

## **PART 7**

### **ASSIGNMENT OF LLC INTEREST**

#### **36 Assignment of LLC interest**

- (1) Subject to the LLC agreement, an LLC interest is assignable in whole or in part.
- (2) Notwithstanding anything to the contrary under applicable law, an LLC agreement may provide that an LLC interest may not be assigned prior to the dissolution and winding up of the limited liability company.

#### **37 Assignee right to participate in management of limited liability company**

The assignee of an LLC interest not admitted as a member shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in the LLC agreement or otherwise upon the vote or consent of all of the members of the limited liability company.

#### **38 Assignee right to exercise rights and powers of a member**

Subject to the LLC agreement –

- (a) an assignment of an LLC interest does not entitle the assignee to become or to exercise any rights or powers of a member;
- (b) an assignment of an LLC interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned.

**39 No liability solely as a result of the assignment**

Subject to the LLC agreement and except to the extent assumed by agreement, until an assignee of an LLC interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

**40 Ceasing of rights of member on assignment**

- (1) Subject to the LLC agreement, a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's LLC interest but the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the LLC interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.
- (2) Whether or not an assignee of an LLC interest becomes a member, the assignor is not released from liability to the limited liability company under Articles 28(1) and 35(3).

**41 Right of assignee to become a member**

An assignee of all or part of an LLC interest may become a member in respect of the assigned LLC interest –

- (a) if permitted in the LLC agreement, in accordance with the terms of the LLC agreement; or
- (b) subject to the LLC agreement, with the approval of all of the members of the limited liability company.

**42 Rights, powers and liabilities of assignee upon becoming a member**

- (1) An assignee who has become a member has, to the extent assigned and transferred, the rights and powers, and is subject to the restrictions and liabilities, of a member contained in the LLC agreement, this Law and any other applicable enactment.
- (2) Notwithstanding paragraph (1), unless otherwise provided in an LLC agreement, an assignee that becomes a member in respect of all or part of an LLC interest –
  - (a) is liable for the obligations of the assignor to make contributions as provided for in Article 28 in respect of the LLC interest (or part thereof) so transferred unless they were unknown to the assignee at the time the assignee became a member and could not be ascertained from the LLC agreement; and
  - (b) is not liable for any other obligations of the assignor with regard to distributions.

**43 Acquisition by limited liability company of interest of member or manager**

Subject to the LLC agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any LLC interest or other interest of a

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member or manager in the limited liability company if immediately following the acquisition, the LLC shall be able to pay its debts as they fall due and any such interest so acquired by the limited liability company shall be deemed cancelled.

## **PART 8**

### **MISCELLANEOUS AND FINAL PROVISIONS**

#### **44 Rules of customary Law**

The rules of customary Law applicable to partnerships shall apply to limited liability companies except in so far as they are inconsistent with the express provisions of this Law or the nature of a limited liability company including that –

- (a) the liability of its members is limited to their contributions pursuant to this Law; and
- (b) it is managed by its members or by one or more managers that may or may not be members, in accordance with this Law.

#### **45 Fiduciary and other duties not owed**

- (1) Subject to any express provisions of an LLC agreement to the contrary, a manager shall not owe any duty (fiduciary or otherwise) to the limited liability company or any member or any other person in respect of the limited liability company other than a duty to act in good faith in respect of the rights, authorities or obligations which are exercised or performed or to which such manager is subject in connection with the management of the limited liability company, provided that such duty of good faith may be expanded or restricted by the express provisions of the LLC agreement.
- (2) Subject to any express provisions of an LLC agreement to the contrary, a member shall not owe any duty (fiduciary or otherwise) to the limited liability company or any other member –
  - (a) in exercising any of its rights or authorities in respect of the limited liability company; or
  - (b) in performing any of its obligations pursuant to the LLC agreement or any member,

and where such member is exercising any vote, consent or approval right in respect of its LLC interest it may exercise such vote, consent or approval in its own best interests as it sees fit even though it may not be in the best interest of the limited liability company or any other member.

#### **46 Appointment and functions of registrar**

- (1) The registrar of companies appointed under Article 196 of the Companies (Jersey) Law 1991 shall be the registrar of limited liability companies.
- (2) The registrar shall maintain a register of limited liability companies which shall contain any declaration, return or statement, or copy of any such

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- 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 companies.
  - (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 company; 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 applications made under this Law, including –
    - (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; or
    - (f) the appeal process that will apply in a case where a person is aggrieved by the registrar's decision to remove the material.

#### **47 Annual administration fee**

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

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

#### **48 Fees, charges and forms**

- (1) Subject to paragraph (2), the Commission may require the payment to it of fees in respect of the performance by the registrar of his or her functions under this Law or a charge for the provision by the registrar of any service, advice, or assistance.
- (2) A mentioned in paragraph (1) 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.
- (3) Where a fee mentioned in paragraph (1) is payable in respect of the performance of a function by the registrar, the registrar does not need to take any action until the fee is paid.
- (4) Where the fee mentioned in paragraph (1) 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.
- (5) The Commission may publish forms and other documents to be used for any of the purposes of this Law, together with details of the manner in which any such document to be delivered to the registrar is to be delivered or authenticated.

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

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

- (a) the document is delivered in a form and manner that are acceptable to the registrar; or
- (b) any information to which the requirement relates is delivered in material, other than a document, that is acceptable to the registrar,

and the document or material, as the case may be, is accompanied by the published fee, if any.

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

- (1) Subject to the provisions of this Article, a person may –
- (a) inspect a document delivered to the registrar under this Law and kept by the registrar or, if the registrar thinks fit, a copy thereof;
- (b) require a certificate of the registration of a declaration or copy, certified or otherwise, of any other document or part of any other document referred to in sub-paragraph (a),

and a certificate given under sub-paragraph (b) shall be signed by the registrar and sealed with the registrar's seal.

- (2) A copy of or extract from a record kept by the registrar, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to the registrar under this Law, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.

### **51 Destruction of old records**

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

### **52 Form of limited liability company's records**

- (1) The records that a limited liability company is required by this Law to keep may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.
- (2) A limited liability company shall take reasonable precautions –
  - (a) to prevent loss or destruction of;
  - (b) to prevent falsification of entries in; and
  - (c) to facilitate detection and correction of inaccuracies in,the records required by this Law to be kept.
- (3) A limited liability company that fails to comply with paragraph (2), is guilty of an offence and liable to a fine of level 4 on the standard scale.

### **53 Registration in the Public Registry**

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

### **54 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 kept under Article 8(6) or to 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 company” or any contraction of those words when the person is not registered as a limited liability company under this Law or otherwise established as a limited liability company 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 member or manager in a limited liability company when the person is not, or implying that a person is a member or manager in a body which is not a limited liability company when the body is a limited liability company, shall be guilty of an offence.

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

- (1) Where an offence under this Law committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate is proved to have been committed with the consent or connivance of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary, or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member’s functions of management as if he or she were a director of the body corporate.

#### **56 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 Minister or any person who is, or is acting as, an officer, employee or agent in an administration of the States for which the 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

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- (d) the registrar, the deputy registrar, an assistant registrar or any person who is, or is acting as, an officer, employee or agent of the registrar.
  - (3) The limitation of liability under this Article does not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

## **57 Penalties**

- (1) The penalty for an offence under Articles 5(3), 7(13), 7(11) or 9(7) shall be a fine not exceeding level 3 on the standard scale.
- (2) The penalty for an offence under Articles 55(1), (3) or (4) shall be a fine and 2 years imprisonment.

## **58 Regulations**

- (1) The States may by Regulations make such other provision as the States think fit for the purposes of carrying this Law into effect.
- (2) Without prejudice to the generality of paragraph (1), Regulations made under this Article may –
  - (a) create offences, and specify penalties for such offences not exceeding imprisonment for 2 years and a fine;
  - (b) provide for mergers of limited liability companies;
  - (c) provide for mergers of limited liability companies with bodies that are incorporated in Jersey but are not limited liability companies;
  - (d) provide for mergers of limited liability companies with bodies incorporated outside Jersey;
  - (e) provide for the winding up and dissolution of solvent and insolvent limited liability companies or a series established under Article 10;
  - (f) provide for the disqualification of persons for office as members of limited liability companies;
  - (g) provide for the accounts and audit of limited liability companies;
  - (h) provide for and apply in respect of limited liability companies, with or without modifications –
    - (i) any provisions in or made under the Companies (Jersey) Law 1991, or
    - (ii) any provisions in or made under the Foundations (Jersey) Law 2009,that apply, in respect of a company or a foundation under either of those Laws, to a matter to which paragraph (1) refers;
  - (j) make such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including provision making amendments to any other enactment as appear to the States to be expedient –
    - (i) for the general purposes, or any particular purpose, of this Law,

- (ii) in consequence of any provision made by or under this Law.

**59 Orders**

- (1) The Minister may by Order make provisions prescribing any matter which is to be prescribed under this Law.
- (2) An Order made under this Law may contain such incidental provisions as the Minister may consider to be necessary or expedient.
- (3) The Minister shall consult the Commission before making any Order under this Law.

**60 Rules of Court**

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

**61 Citation and commencement**

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

