



Jersey

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

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

A LAW to amend the Limited Partnerships (Jersey) Law 1994.

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

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

1 Limited Partnerships (Jersey) Law 1994 amended

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

2 Article 1 (interpretation) amended

In Article 1 –

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

3 Article 3 (limited partnership) amended

In Article 3 –

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

“(3) A body corporate or an unincorporated body may be a general partner or a limited partner.”;

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

“(4) A limited partnership is not a legal person.”.

4 Article 4 (registration of declaration) amended

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

5 Article 5A (annual confirmation) inserted

After Article 5 there is inserted –

“5A Annual confirmation

(1) A general partner or its nominated person must, within the relevant period deliver to the registrar an annual confirmation on behalf of the limited partnership stating –

(a) that the matters stated in its declaration under Article 4(3) are correct;

(b) the limited partnership status as being continuing or in wind up;

(c) any other prescribed information.

(2) If a default is made in compliance with paragraph (1) each of the general partners commits an offence and is liable to a fine not exceeding level 2 on the standard scale and in the case of continuing offence to a further fine not exceeding level 1 on the standard scale for each day that offence continues.

(3) In this Article “relevant period” means –

(a) the period between 1st January and the end of February in each year following the year in which the limited partnership is registered; or

(b) such other period as may be prescribed.

6 Article 7 (name of limited partnership) substituted

For Article 7 there is substituted –

“7 Name of limited partnership

(1) The name of a limited partnership –

(a) must end with the words “Limited Partnership” in full or either of the abbreviations “L.P.” or “LP”; and

(b) may include the name of any general partner or limited partner or any derivation thereof,

but a limited partnership must not have a name which is calculated or likely to mislead.

- (2) The registrar is entitled to refuse to register a declaration where the name to be registered in the registrar's opinion is misleading or otherwise undesirable.
- (3) For the purposes of paragraph (2), the registrar may issue guidance.”.

7 Article 8 (registered office) amended

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

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

8 Article 10 (contribution of limited partner) substituted

For Article 10 there is substituted –

“10 Contribution of limited partner

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

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

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

“(1) A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners except as provided for in the partnership agreement.”.

10 Article 13(1) (rights of limited partner) amended

In Article 13 –

- (a) in paragraph (1), for “A limited partner” there is substituted “Subject to any term of the partnership agreement, and to any regulation made under Article 37A, a limited partner”;
- (b) in paragraph (2) for “dissolve” there is substituted “wind up”;
- (c) for paragraph (3) there is substituted –

“(3) Subject to any provision of the partnership agreement, a limited partnership must not be wound up by the death, legal incapacity, bankruptcy, retirement or withdrawal from the limited partnership of a limited partner who is an individual, or in the case of a body

corporate, its winding up, bankruptcy or withdrawal from the limited partnership.”.

11 Article 14 (share of profits) amended

In Article 14, for paragraph (3) there is substituted –

“(3) For a period of 6 months from the date of receipt by a limited partner of any payment representing a share of the profits of the limited partnership or such longer period as specified by the terms of the partnership agreement in circumstances where the requirements of paragraph (2) have not been met, such payment is repayable by such limited partner with interest at the prescribed rate to the extent that such share of the profits is necessary to discharge a debt or obligation of the limited partnership.”.

12 Article 15(3) (dealings by limited partner with partnership) amended

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

13 Article 16 (limited partners’ rights as between themselves) amended

In Article 16 –

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

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

14 Article 16A (non-partner rights) inserted

After Article 16, there is inserted –

“16A Non-partner rights

A partnership agreement may provide rights to a person who is not a partner and the manner in which such rights may be varied or extinguished (which if the partnership agreement does not provide otherwise, is only with the consent of the person) and such person is entitled to enforce such rights notwithstanding they are not a party to the partnership agreement.”.

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

In Article 17 –

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

“(2) For a period of 6 months from the date of receipt by a limited partner of any payment representing a return of contribution or part thereof received by such limited partner or such longer period as specified by the terms of the partnership agreement in circumstances where

the requirements of paragraph (1) have not been met, such payment is repayable by such limited partner with interest at the prescribed rate to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the limited partnership.”.

- (c) in paragraph (3), after sub-paragraph (b) there is inserted –
“(c) subject to the terms of the partnership agreement.”;
- (d) in paragraph (4)(a), for “on the dissolution” there is substituted “immediately prior to completion of the winding up”;
- (e) in paragraph (6) “capital” is deleted.

16 Article 17A (remedies against partner) inserted

After Article 17 there is substituted –

“17A Remedies against partner

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

17 Article 18 (limited partner’s liability to partnership) amended

For Article 18 there is inserted –

“18 Partner’s liability to partnership

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

18 Article 19 (limited partner’s liability to creditors) amended

In Article 19 –

- (a) in paragraph (1), for “Except as provided in this Law” there is substituted “Except as expressly provided in the partnership agreement or in this Law”;
- (b) for paragraph (2) there is substituted –
“(2) Except as provided in paragraph (3), a limited partner is not liable as a general partner.”;

- (c) for paragraphs (4) and (5) there is substituted –
- “(4) A limited partner is liable under paragraph (3) only to a person who transacts with the limited partnership during the period of and with actual knowledge of the participation of the limited partner in the management of the limited partnership and who then reasonably believed, based upon the limited partner’s conduct, the limited partner to be a general partner.
- (5) A limited partner does not participate in the management of a limited partnership within the meaning of this Article by doing one or more of the following –
- (a) holding an office or interest in, or having a contractual relationship with, a general partner or being a contractor for or an agent or employee of the limited partnership or of a general partner or acting as a director, officer or shareholder of a corporate general partner;
 - (b) consulting with and advising a general partner (or any person appointed to manage or advise the limited partnership) or consenting or withholding consent to any action proposed, in the manner contemplated by the partnership agreement, with respect to the activities of the limited partnership, or discussing the prospects of the limited partnership business;
 - (c) investigating, reviewing, approving, consulting with or being advised by a general partner or any person appointed to manage or advise the limited partnership as to the accounts or affairs of the limited partnership or exercising any right conferred by this Law, or reviewing or approving a valuation of the limited partnership’s assets;
 - (d) granting loans to, or acting as surety or guarantor, or providing any other form of security for the limited partnership or a general partner either generally or in respect of specific obligations;
 - (e) approving or disapproving an amendment to, extension of, or waiver of a term of, the partnership agreement or associated documents; or
 - (f) voting on, or otherwise signifying approval or disapproval of, or withdrawing consent or exercising veto rights in respect of, inter alia, one or more of the following –
 - (i) the winding up and dissolution, or the appointment of a person to carry out the winding up and dissolution, of the limited partnership,
 - (ii) arranging for the winding up of the limited partnership under Article 24(1) or seeking the requisite consent of limited partners to continue the limited partnership under Article 24(2);
 - (iii) the acquisition, disposal, transfer, exchange, lease, pledge or hypothecation, of or creation of a security interest, or other dealing in any asset or other property by or of the limited partnership,

- (iv) the creation, renewal, extension, variation, repayment or discharge of an obligation or debt by the limited partnership,
 - (v) a change in the nature of the activities, objectives or policies of the limited partnership,
 - (vi) the admission, removal or withdrawal of a general or a limited partner and the continuation of the limited partnership thereafter, or
 - (vii) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners,
 - (viii) the indemnification of any partner or other person;
 - (ix) the disposal of all or part of the partnership business or the acquisition of another business by the limited partnership,
 - (x) the acquisition or disposal of a type of investment or a particular investment by the limited partnership,
 - (xi) the exercise of the limited partnership's rights in respect of an investment, or
 - (xii) the participation by a limited partner in a particular investment by the limited partnership;
- (g) bringing an action on behalf of the limited partnership under Article 28(3);
 - (h) being a partner in a partnership which itself is a general partner;
 - (i) delivering a declaration under Article 4(2) or an annual confirmation under Article 5A to the registrar;
 - (j) calling, requesting, attending or participating in any meeting of the partners;
 - (k) enforcing a right under the partnership agreement;
 - (l) entering into, or acting under, a contract with the other partners in the limited partnership;
 - (m) taking part in a decision regarding changes in the persons responsible for the day-to-day management of the limited partnership; or
 - (n) in respect of any board or committee (such as an advisory or investment committee) of the limited partnership, or established by, or as provided for in the partnership agreement in respect of, the general partners, the limited partners or the partners generally –
 - (i) appointing, removing, nominating, electing or otherwise participating in the selection of a representative of the limited partner or any other person to serve on any such board or committee,
 - (ii) acting as a member of any such board or committee either directly or by or through any representative or other person, including giving advice in respect of, or

consenting or refusing to consent to any action proposed by the general partner on behalf of the limited partnership and exercising any powers or authorities or performing any obligations as a member of any such board or committee in a manner contemplated by the partnership agreement.”;

(d) after paragraph (6) there is inserted –

“(7) Except as expressly provided in the partnership agreement or in the terms of their appointment, the members of any committee (whether or not they are limited partners in the limited partnership) owes no duty to the limited partnership, its partners or a third party.

(8) The Minister may by Order amend paragraph (5).”.

19 Article 21 (assignments) amended

In Article 21 for “interest” wherever it occurs there is substituted “partnership interest”.

20 Article 21A (cancellation of registration) substituted

For Article 21A there is substituted –

“21A Cancellation of registration of declaration

- (1) The registrar must cancel the registration of the declaration of a limited partnership on the delivery to the registrar of a request for its cancellation under Article 23(1)(c), 24(3) or 25(4).
- (2) The registrar must cancel the registration of the declaration of a limited partnership on delivery to the registrar of a request by a general partner for the cancellation of the limited partnership upon its continuance in another legal form governed by the laws of Jersey which has been unanimously agreed by the partners and approved by the relevant authorities.
- (3) The registrar may cancel the registration of the declaration of a limited partnership where the limited partnership is in continued default.
- (4) Subject to paragraph (5), the dissolution of a limited partnership takes effect upon the cancellation of registration of the declaration of the limited partnership being registered by the registrar.
- (5) The dissolution of a limited partnership under paragraph (4) is without prejudice to its continuation in another legal form under paragraph (2).”.

21 Article 21B (liability of partners following dissolution by registrar on continued default) and 21C (limitation on exercise of powers and rights by general partner following dissolution) inserted

After Article 21A there is inserted –

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

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

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

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

If, following the dissolution of a limited partnership under Article 21A(3), a general partner of the dissolved limited partnership is entitled under the terms of the agreement or with the consent of the limited partners or otherwise, to exercise any rights, powers or authority in connection with the assets or liabilities of the limited partnership prior to its dissolution, it must not exercise such rights, powers or authority except in so far as may be required that pertained to the limited partnership prior to its dissolution –

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

22 Article 22 (statement of dissolution) substituted

For Article 22 there is substituted –

“22 Application to reinstate dissolved limited partnership

- (1) Where the registration of a declaration of a limited partnership has been cancelled and dissolved under Article 21A, on an application made by a partner or creditor of the limited partnership or by any other interested party, the Court may at any time before the expiry of 10 years after the date on which the cancellation of the registration takes effect make an order declaring the cancellation of registration and dissolution void.
- (2) In making an order under paragraph (1), the Court may give such directions and make such provisions as the Court thinks fit,

including requiring the registrar to publish a notice of the Court's decision and the effect of that decision.

- (3) The person on whose application the order is made under paragraph (1) must within 14 days after the making of the order (or such further time as the Court may allow) deliver the relevant Act of Court to the registrar for registration.”.

23 Article 23 (winding up of limited partnership) substituted

For Article 23 there is substituted –

“23 Winding up of limited partnership

- (1) In the event of the commencement of the winding up of a limited partnership under this Law or the partnership agreement and unless the activities of the limited partnership are taken over and continues in accordance with Article 24(2) –
 - (a) the affairs of the limited partnership must be wound up –
 - (i) by the general partners or by agreement of the limited partners in accordance with the terms of the partnership agreement or by such other persons authorised under this Law or the partnership agreement to carry out the winding up, or
 - (ii) as the Court otherwise orders under Article 24(1)(ii) and 25(1A); and
 - (b) the general partner or the other person authorised to wind up the limited partnership must, on completion of the winding up, file a request for the cancellation of its registration with the registrar.
- (2) A general partner who fails to comply with paragraph (1) commits an offence and is liable to a fine not exceeding level 2 on the standard scale.”.

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

For Article 24 there is substituted –

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

- (1) Notwithstanding any term of the partnership agreement to the contrary, but subject to paragraph (2) –
 - (a) where the sole or last remaining general partner is an individual, the general partner's death, legal incapacity, bankruptcy, retirement or withdrawal from the limited partnership; or

- (b) where the sole or last remaining general partner is a body corporate, its dissolution, bankruptcy or withdrawal from the limited partnership,
must cause the commencement of the winding up of the limited partnership which must immediately be wound up –
- (i) in accordance with the partnership agreement, or
 - (ii) on the application of a limited partner or a creditor of the limited partnership, in accordance with the directions of the Court.
- (2) A limited partnership is not required to be wound up under paragraph (1) if, within 90 days of the commencement of the winding up, the limited partners, either unanimously or as otherwise provided for in the partnership agreement, elect one or more general partners, in which event the limited partnership's winding up is deemed not to have been caused and the activities of the limited partnership may be taken over and continued as provided for in the partnership agreement or a subsequent agreement.
- (3) If a limited partnership's winding up is caused under paragraph (1), and the activities of the limited partnership are not taken over and continued in accordance with paragraph (2), a request to cancel its registration signed by a limited partner, or such other person, authorised by agreement of the limited partners or in accordance with the terms of the partnership agreement (as appropriate) must be delivered by the person to the registrar.
- (4) If default is made in compliance with this Article for the delivery of the request, the person responsible commits an offence and is liable to a fine not exceeding level 2 on the standard scale.”.

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

In Article 25 –

- (a) in the Article heading for “dissolution” there is substituted “winding up”;
- (b) in paragraph (1) for “dissolution” there is substituted “winding up”;
- (c) after paragraph (1) there is inserted the following paragraph –
“(1A) The Court may, on the application of the registrar, order the winding up of a limited partnership if satisfied that the activities of the limited partnership are bringing the reputation of Jersey into disrepute.”;
- (d) in paragraph (3) for “When a limited partnership has been dissolved under this Article” there is substituted “Following an order for the winding up of a limited partnership under paragraph (1) and (1A),”;
- (e) after paragraph (3) there is inserted –
“(4) Upon completion of a winding up under this Article, the person authorised by the Court to wind up the limited partnership must deliver a request for the cancellation of the registration of the limited partnership to the registrar.

- (5) A person who fails to comply with paragraph (4) commits an offence and is liable to a fine not exceeding level 2 on the standard scale.”.

26 Article 27 (settling accounts on dissolution) amended

In Article 27 –

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

27 Article 37A (regulations) amended

In Article 37A(2) –

- (a) in sub-paragraph (a), for “; and” there is substituted a semi-colon;
- (b) in sub-paragraph (b), for the full-stop there is substituted a semi-colon;
- (c) after sub-paragraph (b) there is substituted –
 - “(c) provide for the continuance of limited partnerships;
 - (d) provide for the merger of limited partnerships;
 - (e) provide for the creation of partnership interests corresponding to separate portfolios of assets with segregated liability and for the merger or conversion of such segregated portfolios of assets; and
 - (f) amend Articles 8 and 13.”.

28 Citation and commencement

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