



LIMITED LIABILITY PARTNERSHIPS (DISSOLUTION AND WINDING UP, ETC.) (JERSEY) REGULATIONS 201-

**CONSULTATION DRAFT ONLY - NOT READY
FOR LODGING**

REPORT

Explanatory Note

These Regulations make provision for the dissolution and winding up of limited liability partnerships and supplement the provisions of the Limited Liability Partnership (Jersey) Law 201- (the Law").

Part 1 comprises *Regulation 1*, which sets out the definitions of the terms used in these Regulations.

Part 2, which applies to any limited liability partnership, sets out the circumstances when a limited liability partnership may be dissolved. In particular, by *Regulation 3*, a limited liability partnership is not dissolved by any change in the persons who are partners, if the partnership agreement so provides, and, by *Regulation 4*, it is dissolved immediately upon there ceasing to be 2 or more partners.

When a limited liability partnership dissolves, other than by order of the Royal Court ("Court"), *Regulation 5* requires the secretary of the limited liability partnership or, if none, any partner remaining at the time the limited liability partnership dissolves, within 28 days of dissolution to provide a statement of dissolution to the registrar. Upon receipt of the statement, the registrar must issue a certificate of dissolution and publish a notice of dissolution. By Article 1(4) of the Limited Liability Partnerships (Jersey) Law 201-, the requirement to "publish" a form, document or notice is a



requirement to publish it in a manner that is likely to bring it to the attention of any person affected by it).

Regulation 6 sets out the circumstances when a partner may apply to the Court for an order of dissolution of a limited liability partnership. When the Court makes such an order the partner who made the application must deliver a copy of the Court order to the registrar within 28 days of it being made and, upon receipt of the order, the registrar must register the order, issue a certificate of dissolution and publish a notice stating that a certificate of dissolution has been issued.

Regulation 7 makes provision enabling 2 or more partners in a dissolved limited liability partnership to acquire the partnership interests of the other persons who were partners at the date of dissolution, either by agreement of those partners or by order of the Court. Where such an acquisition takes place winding up of the limited liability partnership will not be completed, the limited liability partnership will continue as if it had not been dissolved and the partners whose interests were acquired will be taken to have retired from the partnership. One of the acquiring partners must within 28 days after the acquisition send to the registrar a statement of cancellation of the dissolution and, upon receipt of the statement, the registrar must issue a certificate of cancellation of dissolution and publish a notice stating that such a certificate has been issued.

Part 3 makes provision for the winding up of solvent limited liability partnerships, as stated in *Regulation 8*.

Regulation 9 provides that the dissolution manager is responsible for the winding up of a solvent limited liability partnership, and sets out who will be a dissolution manager. It makes clear that should the limited liability partnership become insolvent following dissolution, the dissolution manager will need to cease its winding up under Part 3, and follow the procedures in Part 4.

Regulation 9(6) confirms that upon a Limited Liability Partnership only having one partner remaining, whether before or after the partnership has dissolved, despite the limited liability partnership's registration remaining in force, the limited liability partnership will cease to be a legal person and the duty to appoint a secretary will cease to apply. It also provides that, in the event of there being only one partner remaining, the limited liability partnership property vests in the dissolution manager, proceedings against the limited liability partnership will be against the dissolution manager in that capacity, and judgments will be against the dissolution manager in that capacity.

Regulation 10 enables the Court to give directions in the course of the winding up of the affairs of a solvent limited liability partnership upon the application of any partner or creditor of the limited liability partnership, the dissolution manager or other persons listed in that Regulation.

Regulation 11 provides for the settling of accounts of a solvent limited liability partnership on winding up, including the manner in which the liabilities of a solvent limited liability partnership must be settled.

Regulation 12 requires the dissolution manager to send to the registrar, within 28 days after completion of the winding up, a statement to the effect that the winding up has been completed.



Part 4 makes provision for the winding up of insolvent limited liability partnerships, whether they are insolvent at the date of dissolution or become insolvent following dissolution.

Regulation 13 defines “insolvency manager”, in relation to an insolvent limited liability partnership, as the person for the time being appointed under *Regulation 17, 19 or 20* to be responsible for its insolvent winding up, and “insolvency committee” as the committee appointed under *Regulation 18*.

Regulation 14 provides that the dissolution manager is responsible for the winding up of an insolvent dissolved limited liability partnership until such time as an insolvency manager is appointed and sets out who will be a dissolution manager. It also confirms that upon dissolution of an insolvent limited liability partnership, in certain circumstances, the limited liability partnership ceases to be a legal person and the duty to appoint a secretary ceases to apply. It also provides that in that event the limited liability partnership property vests in the dissolution manager, proceedings against the limited liability partnership will be against the dissolution manager in that capacity, and judgments will be against the dissolution manager in that capacity.

Regulation 15 sets out procedures for the dissolution manager for the purposes of informing the registrar of the insolvency and calling a meeting of the creditors of the limited liability partnership.

Regulation 16 sets out the quorum and procedures at creditors' meetings.

Regulations 17 to 20 provide for the appointment and remuneration of an insolvency manager or an insolvency committee, the removal of an insolvency manager and the limited powers of the dissolution manager during the period before appointment of the insolvency manager.

Regulation 21 permits applications to be made to the Court for the Court to determine any question arising in an insolvent winding up.

Regulation 22 provides for the rules in force for the time being with respect to persons against whom a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990 to apply in respect of the winding up of limited liability partnerships, modified so as to refer to the insolvency manager and to insolvent winding up.

Regulation 23 provides for arrangements entered into between creditors and the limited liability partnership prior to the commencement of an insolvent winding up to be binding in the circumstances described in that Regulation.

Regulation 24 makes provisions for the settling of accounts on winding up of an insolvent limited liability partnership, including the priority of payments to be made to creditors.

By *Regulation 25*, if an insolvent winding up continues for more than 12 months, the insolvency manager is required to call a further meeting or meetings of the partners and creditors of the limited liability partnership, at the intervals described in that Regulation.

Regulation 26 requires the insolvency manager to call a final meeting for the partners and creditors to explain the final report, and *Regulation 27* requires the insolvency manager to deliver a statement to the registrar with the result of that meeting and a copy of the insolvency manager's report.



Regulation 28 describes the effect of a declaration made under the Bankruptcy (Désastre) (Jersey) Law 1990 that a partnership is *en désastre*.

Regulation 29 describes the registrar's duty to register the statement received under *Regulation 27*, or the notification received under Regulation 36(3) of the Bankruptcy (Désastre) (Jersey) Law 1990, and to cancel the registration of the limited liability partnership at the end of 3 months from the registration of such statement or notification.

Regulation 30 describes the circumstance when an insolvency manager can pay a class of creditors in full or compromise a claim by or against the limited liability partnership and *Regulation 31* describes the process to be followed by an insolvency manager wishing to disclaim onerous movable property (defined as an unprofitable contract or other movable property that is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act).

Regulation 32 gives the Court power to make an order to vest disclaimed property in, or deliver it to, another person.

Regulation 33 makes clear that in an insolvent winding up a lien or other right to retain possession of any records of a limited liability partnership shall not prevent the insolvency manager taking possession of them.

Regulation 34 enables the insolvency manager to apply to the Court where a transaction has been entered into by the limited liability partnership at an undervalue, or where the limited liability partnership has given a preference to any person, for an order to restore the position to what it would have been had that event not occurred.

Regulation 35 enables the insolvency manager to apply to the Court for an order that a partner or former partner be personally liable for all or any debts or other liabilities of the limited liability partnership arising at any time before the commencement of the insolvent winding up where the person knew that there was no prospect that the limited liability partnership would avoid insolvency or the person was reckless as to whether it would avoid insolvency.

Regulation 36 enables the insolvency manager to apply to the Court for an order requiring any person who was carrying out any business of the limited liability partnership with a view to defrauding creditors of the limited liability partnership to be liable to make such contributions to the limited liability partnership property as the Court thinks proper.

Regulation 37 enables the insolvency manager to apply to the Court for an order in respect of any provision of credit to the limited liability partnership where the transaction is or was extortionate (within the meaning given in that Regulation) and was entered into in the period of 3 years ending with the commencement of the insolvent winding up.

Regulation 38 applies *Regulations 35 to 37* to an insolvent limited liability partnership in respect of which a *désastre* is declared under the Bankruptcy (Désastre) (Jersey) Law 1990.

Regulation 39 enables the Court to order property or records to be transferred to the insolvency manager and *Regulation 40* requires the persons listed in that Regulation to give the insolvency manager information concerning the limited liability partnership.



Regulation 41 requires the insolvency manager to provide the Attorney General with details of any matter where it appears that any person has been guilty of an act or omission in relation to the limited liability partnership for which that person is criminally liable. The Attorney General may then refer the matter to the Jersey Financial Services Commission or the Chief Minister for further enquiry.

Regulations 42 and 43 give investigative powers to the Commission or Chief Minister or inspector appointed to investigate, including powers to question and, if in possession of a warrant issued by the Bailiff, to search premises and retain property at those premises.

Regulation 44 provides for it to be a contempt of the Court not to comply with a requirement under *Regulation 43* or to refuse to answer any question put to a person by an inspector for the purpose of the investigation.

Regulation 45 provides for the admissibility of an inspector's report in proceedings.

Regulation 46 provides for the non-disclosure of privileged information.

Regulation 47 provides for the enforcement of any duty to deliver a document or give a notice under these Regulations.

Regulation 48 describes the qualifications of an insolvency manager and states who may not be an insolvency manager, and *Regulation 49* provides for it to be an offence for a person to give or agree or offer to give a partner in, or a creditor of, a limited liability partnership any inducement to secure the appointment of a person as insolvency manager.

By *Regulation 50* an insolvency manager who vacates office is required to give notice of that fact to the registrar and the creditors.

Regulation 51 requires any correspondence from an insolvent limited liability partnership that is being wound up to make clear that the limited liability partnership is subject to an insolvent winding up.

Regulation 52 bars the right of a creditor to take other proceedings in bankruptcy, apart from applying for a declaration under the Bankruptcy (Désastre) (Jersey) Law 1990, if a limited liability partnership is subject to an insolvent winding up under these Regulations.

Regulation 53 sets out when records of an insolvent limited liability partnership may be disposed of.

Part 5 applies in respect of all limited liability partnerships.

Regulation 54 provides for the recognition of proceedings in other jurisdictions relating to the dissolution or winding up of a limited liability partnership.

Regulation 55 sets out the penalties that apply in relation to offences committed under these Regulations.

The penalty for the following offences shall be a fine not exceeding level 2 on the standard scale –



Regulation 25(3): Failure by an insolvency manager to call a meeting as required by Regulation 25(1) and to give notice of the meeting, as required under Regulation 25(2); and

Regulation 26(3): Failure by an insolvency manager to make up a report of the winding up of a limited liability partnership and to call meetings as required by Regulation 26(1) and to give notice of the meeting, as required under Regulation 26(2).

The penalty for the following offences shall be a fine not exceeding level 4 on the standard scale –

Regulation 5(3) or 5(5): Failure to notify the registrar of the dissolution of a limited liability partnership;

Regulation 6(4): Failure to send to the registrar the Court's order for dissolution as required by Regulation 6(2);

Regulation 7(4): Failure to notify the registrar of the cancellation of dissolution as required by Regulation 7(2);

Regulation 9(8): Failure to deliver to the Judicial Greffier a notice in respect of vesting of property in a solvent winding up of a limited liability partnership, as required by Regulation 9(7);

Regulation 12(2): Failure to notify the registrar of completion of winding up, as required by Regulation 12(1);

Regulation 14(8): Failure to deliver to the Judicial Greffier a notice in respect of vesting of property in an insolvent winding up of a limited liability partnership, as required by Regulation 14(7);

Regulation 17(8): Failure to deliver to the Judicial Greffier a notice in respect of vesting of property in an insolvent winding up of a limited liability partnership, as required by Regulation 17(5), or deliver a notice of an insolvency manager's appointment, as required by Regulation 17(7);

Regulation 21(4): Failure to send to the registrar the Court's order staying proceedings in the winding up, as required by Regulation 21(3);

Regulation 27(4): Failure to send to the registrar a statement of any meetings held in respect of the winding up of an insolvent limited liability partnership or a copy of the insolvency manager's report, as required by Regulation 27(1), or a statement that there was no quorum, as required by Regulation 27(2), or a statement that the meeting was not held, as required by Regulation 27(3);

*Regulation 28(3): Failure to send to the registrar a copy of a declaration or an order recalling a declaration where there is a *désastre* in respect of a limited liability partnership, as required by Regulation 28(1);*

Regulation 29(5): Failure to send to the registrar an order of the Court deferring the date for the issuance of a certificate of cancellation of a limited liability partnership, as required by Regulation 29(4);

Regulation 53(4): Failure to comply with a direction of the Court in respect of the disposal of records of a limited liability partnership;

Regulation 54(8): Failure to send to the registrar a copy of the Court's order recognizing an order of a court outside Jersey, as required by Regulation 54(6).

The penalty for the following offences shall be an unlimited fine –



Regulation 15(6): Failure by the dissolution manager to call a meeting of creditors as required by *Regulation 15(1)*; failure by that person to preside at the creditors' meeting, as required by *Regulation 15(3)*; failure by that person to take action in respect of the limited liability partnership without the sanction of the Court in the circumstances described in *Regulation 15(4)*;

Regulation 50(2): Failure of an insolvency manager to give notice to the registrar and creditors after vacating office, as required by *Regulation 50(1)*;

Regulation 51(2): Failure to include in the correspondence of an insolvent limited liability partnership being wound up a notice to the effect that it is subject to an insolvent winding up, as required by *Regulation 51(1)*.

The penalty for an offence under *Regulation 40(4)* of failing to provide information to the insolvency manager or attend on the insolvency manager when requested, as required by *Regulation 40(1)*, shall be a maximum of 6 months imprisonment and an unlimited fine.

The penalty for the following offences shall be a maximum of 2 years imprisonment and an unlimited fine –

Regulation 42(8): Knowingly or recklessly providing misleading, false or deceptive information to the Commission, the Chief Minister or an inspector;

Regulation 43(6): Wilfully obstructing a person executing a warrant to search premises and seize and retain material;

Regulation 49: Giving or offering a partner or creditor an inducement to secure the appointment of an insolvency manager.

Regulation 56 makes a minor consequential amendment to the Money Laundering (Jersey) Order 2008, so that it refers to these Regulations.

Regulation 57 gives the title of these Regulations and provides for these Regulations to come into force immediately upon commencement of the Law.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.





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LIMITED LIABILITY PARTNERSHIPS (DISSOLUTION AND WINDING UP, ETC.) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 2, 3, 5, 8, 9(1), 12(10), 22, 23, 24 and 37 of the Limited Liability Partnerships (Jersey) Law 201-, have made the following Regulations –

PART 1

INTRODUCTION

1 Interpretation

- (1) In these Regulations “Law” means the Limited Liability Partnerships (Jersey) Law 201-.
- (2) For the purposes of these Regulations, a limited liability partnership is insolvent if it is unable to discharge its debts, excluding any liability to a partner or former partner in respect of the partner’s partnership interest, as they fall due.

PART 2

DISSOLUTION OF LIMITED LIABILITY PARTNERSHIP

2 Application of Part 2

This Part applies to the dissolution of any limited liability partnership.



3 Dissolution upon a change in the partners in a partnership

Subject to Regulation 4, a limited liability partnership shall not be dissolved by any change in the persons who are partners in it if the partnership agreement so provides.

4 Dissolution upon partnership ceasing to have 2 or more partners

Despite any provision, express or implied, of the partnership agreement to the contrary, a limited liability partnership shall be dissolved immediately upon there ceasing to be 2 or more partners in the partnership.

5 Dissolution by act of partner or other occurrence

- (1) Where a limited liability partnership is dissolved by any act of a partner or by any occurrence other than under Regulation 6, the secretary shall, within 28 days after the date of dissolution, deliver to the registrar a statement of dissolution signed by the secretary.
- (2) Upon receiving a statement under paragraph (1), the registrar shall register the statement and issue a certificate of dissolution and shall –
 - (a) serve the certificate on the limited liability partnership and secretary (if any);
 - (b) register the certificate; and
 - (c) publish a notice stating that such a certificate has been issued.
- (3) Subject to paragraph (4) and (5), a secretary that fails to comply with paragraph (1) shall be guilty of an offence.
- (4) A secretary shall not be guilty of an offence under paragraph (3) unless the secretary knew, or the circumstances of the dissolution are such that the secretary ought to have known, that the partnership had dissolved.
- (5) If the limited liability partnership has no secretary on the date of dissolution the duty of the secretary described in paragraph (1) shall rest with the partners who were remaining on that date and accordingly if none of those partners comply with paragraph (1) they shall all be jointly and severally guilty of an offence.
- (6) Subject to Article 22(6) of the Law, a certificate issued under paragraph (2) is conclusive evidence that the limited liability partnership is dissolved.

6 Power of Court to order dissolution

- (1) The Court may, on the application of any partner in a limited liability partnership, order the dissolution of the partnership in any of the following cases –
 - (a) when a partner, other than the partner making the application, becomes in any way permanently incapable of performing that partner's part of the partnership agreement;
 - (b) when the Court, having regard to the nature of the partnership, is of the opinion that a partner, other than the partner making the



- application, has been guilty of conduct that would prejudicially affect the carrying on of the partnership business;
- (c) when a partner, other than the partner making the application, wilfully or persistently commits a breach of the partnership agreement, or otherwise behaves in matters relating to the partnership business in such a manner that it is not reasonably practicable for the other partner or partners to carry on that business in partnership with that partner;
 - (d) when the partnership business can only be carried on at a loss; or
 - (e) whenever (in any case) circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.
- (2) Where the Court orders the dissolution of a limited liability partnership under paragraph (1), the partner making the application shall deliver a copy of the order to the registrar within 28 days after it is made.
 - (3) Upon receiving an order made under paragraph (1), the registrar shall –
 - (a) register the order;
 - (b) issue a certificate of dissolution; and
 - (c) publish a notice stating that such a certificate has been issued.
 - (4) A partner making the application under this Regulation who fails to comply with paragraph (2) shall be guilty of an offence.
 - (5) Subject to Article 22(6) of the Law, a certificate issued under paragraph (3) is conclusive evidence that the limited liability partnership is dissolved.

7 Continuation of partnership following dissolution

- (1) Where, following dissolution of a limited liability partnership but before completion of the winding up of its affairs, 2 or more of the partners are to acquire the partnership interests of each of the remaining partners, either by agreement or upon a direction of the Court pursuant to Regulation 10(2), then upon such acquisition taking place –
 - (a) the winding up of the affairs of the limited liability partnership shall not be completed and the partnership shall continue as if it had not been dissolved; and
 - (b) the partners whose interests are acquired shall be taken to retire from the limited liability partnership.
- (2) The limited liability partnership shall, within 28 days after the acquisition described in paragraph (1), send to the registrar a statement of cancellation of dissolution signed by one of the acquiring partners, specifying the date when the retiring partner's interests are to be acquired, in addition to any statement that must be sent under Article 19 of the Law.



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- (3) Upon receiving a statement made pursuant to paragraph (2) the registrar shall register the statement and issue a certificate to that effect, and shall –
 - (a) serve the certificate on the limited liability partnership and secretary (if any);
 - (b) register the certificate; and
 - (c) publish a notice stating that such a certificate has been issued.
 - (4) A limited liability partnership that fails to comply with paragraph (2) shall be guilty of an offence.
 - (5) A certificate issued under paragraph (3) is conclusive evidence that the certificate of dissolution issued under Regulation 5(2) in respect of the limited liability partnership is void.
 - (6) For the purposes of Article 22(6)(b) of the Law, the Court may make an order declaring a certificate of dissolution void under Article 22(6) of the Law if –
 - (a) a certificate of dissolution was issued in respect of the limited liability partnership under Regulation 5, or 6 or this Regulation;
 - (b) Part 4 does not apply in respect of the limited liability partnership; and
 - (c) all persons who were partners in the limited liability partnership immediately before its dissolution consent to the order being made.
 - (7) For the purposes of Article 23(5)(b) of the Law, the Court may make an order declaring a certificate of cancellation void under Article 23(5) of the Law if –
 - (a) the limited liability partnership was not wound up under Part 4; and
 - (b) all persons who were partners in the limited liability partnership immediately before its dissolution consent to the order being made.

PART 3

WINDING UP, ETC. OF SOLVENT LIMITED LIABILITY PARTNERSHIP

8 Application of Part 3

This Part applies in respect of the winding up of a solvent limited liability partnership.

9 Winding up

- (1) A limited liability partnership that is solvent at the date of dissolution shall have its affairs wound up by a dissolution manager in accordance with this Part.
- (2) Subject to paragraph (3) –



- (a) where the limited liability partnership is dissolved in the circumstances described in Regulation 4, the dissolution manager shall be the person who, at the date of dissolution, was the last remaining partner or –
 - (i) if that partner is deceased, his or her personal representatives, or
 - (ii) if that partner is a body corporate that is in the course of being wound up, the liquidator or person winding up the affairs of that partner;
 - (b) in the event of the dissolution of a limited liability partnership in any other circumstances, the dissolution manager shall be the person appointed by the partners for the purpose or, if none, shall be all of the partners jointly.
- (3) The Court may appoint or remove a dissolution manager upon the application of –
- (a) a partner in the partnership;
 - (b) a person who is the dissolution manager by virtue of paragraph (2) or previously appointed as the dissolution manager under this paragraph; or
 - (c) any other person who appears to the Court to be an interested party, where the Court is satisfied that a person described in subparagraph (a) or (b) is unable or unwilling to make an application under this paragraph.
- (4) Subject to paragraphs (5) and (6), the dissolution manager shall, as agent for the limited liability partnership, do whatever is necessary or desirable to achieve a beneficial winding up of the limited liability partnership's affairs, or otherwise as the partnership agreement may provide.
- (5) If, at any stage during the winding up of a limited liability partnership that was, or is believed to have been, solvent at the date of dissolution, it becomes apparent that it was insolvent at that date or has become insolvent following dissolution, the dissolution manager shall –
- (a) cease winding it up pursuant to this Part; and
 - (b) take the steps the dissolution manager is required to take under Part 4.
- (6) Upon the dissolution of a limited liability partnership in the circumstances described in Regulation 4, or upon the limited liability partnership ceasing to have 2 or more partners at any time during the winding up of its affairs following its dissolution in any other circumstances –
- (a) the limited liability partnership shall cease to be a legal person;
 - (b) the duty to appoint a secretary under Article 8 of the Law shall cease to apply;
 - (c) the limited liability partnership property vested in the limited liability partnership and the beneficial interest of the limited liability partnership in any limited liability partnership property



- held by any person on its behalf, shall vest in the dissolution manager;
- (d) the dissolution manager shall, in the person's capacity as such, do whatever is necessary or desirable to achieve a beneficial winding up of the limited liability partnership's affairs, or otherwise as the partnership agreement may provide;
 - (e) any proceedings which might have been continued or commenced against the limited liability partnership may be continued or commenced against the dissolution manager in that capacity;
 - (f) any judgment obtained against the limited liability partnership prior to its ceasing to have 2 or more partners and any judgment obtained against the dissolution manager in any proceedings continued or commenced in accordance with sub-paragraph (e) shall only be enforceable against the limited liability partnership property.
- (7) Where the name of a limited liability partnership is inscribed in the Public Registry as the holder of, or as having an interest in, immovable property, the dissolution manager, in whom that property or interest vests by virtue of paragraph (6)(c) shall deliver to the Judicial Greffier notice of such vesting within 28 days after the property so vests.
- (8) It shall be an offence for the dissolution manager to fail to comply with paragraph (7).

10 Power of Court to give directions as to winding up

- (1) The Court may give such directions as it thinks fit in the course of the winding up of the affairs of a limited liability partnership upon the application of –
 - (a) any partner in the partnership;
 - (b) any creditor of the partnership;
 - (c) the dissolution manager; or
 - (d) any other person who appears to the Court to be an interested party, where the Court is satisfied that a person described in sub-paragraph (a), (b) or (c) is unable or unwilling to make an application under this paragraph.
- (2) Without prejudice to the discretion conferred by paragraph (1), on an application by the relevant majority, the Court may give a direction that the applicants purchase the partnership interest of each of the remaining partners at such a price and otherwise upon such terms as it thinks fit.
- (3) In paragraph (2), “relevant majority” in relation to a limited liability partnership shall have the meaning assigned to it for the purposes of that paragraph by the partnership agreement or, if no meaning is so assigned, shall mean a majority of the partners of which such partnership was composed at the date of its dissolution, being either –
 - (a) a majority of the partners by number; or
 - (b) such number of partners as were at the date of dissolution together entitled to a majority share of the limited liability partnership



property remaining upon dissolution, after payment of any liabilities described in Regulation 11(1).

- (4) In paragraph (2), the reference to the partnership interest of each of the remaining partners includes the partnership interest of any deceased partner and of any partner, other than an individual, which has ceased to exist.

11 Settling accounts on winding up

- (1) Where accounts are settled in the course of the winding up of the affairs of a limited liability partnership, the liabilities of the partnership shall be paid in the following order of priority –
- (a) liabilities to creditors, excluding any partner or former partner in the limited liability partnership in respect of the partner's or former partner's partnership interest or in respect of any loan made by the partner or former partner to the partnership for any purpose; then
 - (b) subject to the partnership agreement and to any agreement between the partnership and the former partner in question –
 - (i) liabilities to former partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
 - (ii) liabilities to former partners in the limited liability partnership in respect of their partnership interests; then
 - (c) subject to the partnership agreement –
 - (i) liabilities to partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
 - (ii) liabilities to partners in the limited liability partnership in respect of their partnership interests.
- (2) Subject to the partnership agreement, any limited liability partnership property remaining after payment of the liabilities described in paragraph (1) shall be distributed equally to the partners.

12 Completion of winding up

- (1) Within 28 days after the completion of the winding up of the affairs of a limited liability partnership, a statement to that effect signed by the dissolution manager shall be delivered to the registrar.
- (2) It shall be an offence for the dissolution manager to fail to comply with paragraph (1).



PART 4

WINDING UP, ETC. OF INSOLVENT LIMITED LIABILITY PARTNERSHIP

13 Application and interpretation of Part 4

- (1) This Part applies in respect of the winding up of an insolvent limited liability partnership, whether insolvent at the date of dissolution or becoming insolvent following dissolution.
- (2) In this Part –
 - “insolvency manager” means, in relation to an insolvent limited liability partnership, the person for the time being appointed under Regulation 17, 19 or 20 to be responsible for its insolvent winding up;
 - “insolvency committee” means, in relation to an insolvent limited liability partnership, the committee appointed under Regulation 18.

14 Winding up

- (1) Subject to paragraphs (2) and (3) –
 - (a) where the limited liability partnership is dissolved in the circumstances described in Regulation 4, the dissolution manager shall be the person who, at the date of dissolution, was the last remaining partner or –
 - (i) if that partner is deceased, his or her personal representatives, or
 - (ii) if that partner is a body corporate that is in the course of being wound up, the liquidator or person winding up the affairs of that partner;
 - (b) in the event of the dissolution of a limited liability partnership in any other circumstances, the dissolution manager shall be the person appointed by the partners for the purpose or, if none, shall be all of the partners jointly;
- (2) If the winding up of the affairs of a limited liability partnership began at a stage during which the limited liability partnership was, or was believed to have been, solvent at the date of dissolution, the person who was the dissolution manager under Part 3 shall be the dissolution manager for the purposes of this Part.
- (3) The Court may appoint a dissolution manager upon the application of –
 - (a) a partner in the limited liability partnership;
 - (b) a person who is the dissolution manager by virtue of paragraph (1) or (2) or having been appointed as the dissolution manager under this paragraph; or
 - (c) any other person who appears to the Court to be an interested party, where the Court is satisfied that a person described in subparagraph (a) or (b) is unable or unwilling to make an application under this paragraph.



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- (4) No appointment may be made pursuant to paragraph (3) in respect of an insolvent limited liability partnership after an insolvency manager is first appointed for it.
 - (5) Notwithstanding that a partner continues to be an agent of the partnership, the partner's ability to bind the insolvent limited liability partnership shall cease upon dissolution of the limited liability partnership.
 - (6) Upon the dissolution of a limited liability partnership in the circumstances described in Regulation 4, or upon the limited liability partnership ceasing to have 2 or more partners at any time during the winding up of its affairs following its dissolution in any other circumstances –
 - (a) the limited liability partnership shall cease to be a legal person;
 - (b) the duty to appoint a secretary under Article 8 of the Law shall cease to apply;
 - (c) the limited liability partnership property vested in the limited liability partnership and the beneficial interest of the limited liability partnership in any limited liability partnership property held by any person on its behalf, shall vest in the dissolution manager;
 - (d) any proceedings which might have been continued or commenced against the limited liability partnership may be continued or commenced against the dissolution manager in that capacity;
 - (e) any judgment obtained against the limited liability partnership prior to its dissolution, and any judgment obtained against the dissolution manager in any proceedings continued or commenced in accordance with sub-paragraph (d), shall only be enforceable against the limited liability partnership property.
 - (7) Where the name of a limited liability partnership is inscribed in the Public Registry as the holder of, or as having an interest in, immovable property, the dissolution manager, in whom that property or interest vests by virtue of paragraph (6)(c) shall deliver to the Judicial Greffier notice of such vesting within 28 days after the property so vests.
 - (8) It shall be an offence for the dissolution manager to fail to comply with paragraph (7).

15 Partnership insolvent upon or following dissolution

- (1) If the dissolution manager becomes aware, or forms the opinion, that the limited liability partnership is insolvent at the date of dissolution or at any time following dissolution, the dissolution manager –
 - (a) shall within 7 days of becoming aware, or forming the opinion, send a notice of that fact to the registrar; and
 - (b) shall –
 - (i) by not less than 14 days' notice, call a meeting of all known creditors of the limited liability partnership, to be held



- within Jersey within 28 days of sending the notice referred to in sub-paragraph (a) and, in the notice, nominate an insolvency manager,
- (ii) when that notice is given to the creditors, deliver a copy of it to the registrar,
 - (iii) not less than 10 days before the day for which the meeting is called, publish a notice of the meeting,
 - (iv) during the period before the creditors' meeting is held, furnish any creditor free of charge with such information concerning the affairs of the limited liability partnership as the creditor may reasonably request, and
 - (v) make out a statement as to the affairs of the limited liability partnership and lay that statement before the creditors' meeting.
- (2) If the dissolution manager is qualified for appointment as the insolvency manager for the limited liability partnership, the dissolution manager may nominate himself or herself under paragraph (1)(b)(i).
- (3) The dissolution manager shall be the chairman at the creditors' meeting.
- (4) During the period after which the dissolution manager becomes aware or forms the opinion that the limited liability partnership is insolvent and before the appointment of an insolvency manager, the dissolution manager shall not take any action, except action sanctioned by the Court, in respect of the limited liability partnership, other than to secure compliance with this Regulation or to protect and preserve the limited liability partnership property.
- (5) The insolvent winding up of a limited liability partnership commences –
 - (a) where the partnership is insolvent upon dissolution, on the date of dissolution; and
 - (b) where the partnership becomes insolvent following dissolution, on the day on which the creditors' meeting is held.
- (6) A dissolution manager who fails to comply with paragraph (1), (3) or (4) shall be guilty of an offence.

16 Quorum and procedure at creditors' meeting

- (1) Any meeting of creditors of an insolvent limited liability partnership is competent to act if a quorum is present.
- (2) A quorum is at least one creditor entitled to vote being present or represented by proxy by any person.
- (3) Every creditor who has been given notice of a creditors' meeting shall be entitled to vote at the meeting or any adjournment of it.
- (4) Votes shall be calculated according to the amount of the creditor's debt on the day the insolvent winding up commences.
- (5) A creditor shall not vote in respect of a debt for an unliquidated amount, or any debt whose value is not ascertained, except where the dissolution manager (or, if an insolvency manager has been appointed, the



insolvency manager) agrees to put upon the debt an estimated minimum value for the purpose of entitlement to vote.

- (6) For a resolution to pass at a creditors' meeting it must be supported by creditors the values of whose votes are at least half the value of the votes of the creditors who vote on the resolution.

17 Appointment of insolvency manager

- (1) The creditors at a creditors' meeting may nominate an insolvency manager.
- (2) The person nominated by the creditors to be insolvency manager or, if none, the person nominated by the dissolution manager, is appointed with effect from the conclusion of the creditors' meeting.
- (3) A creditor or partner of the limited liability partnership or the dissolution manager may, within 7 days after the day on which the nomination was made by the creditors, apply to the Court for an order either –
 - (a) directing that the person nominated by the dissolution manager shall be the insolvency manager instead of or jointly with the person nominated by the creditors; or
 - (b) appointing some other person to be the insolvency manager.
- (4) Upon the appointment of the insolvency manager –
 - (a) all the powers and duties of the dissolution manager shall cease;
 - (b) the appointment of a secretary pursuant to Article 8 of the Law shall cease, and the duties of a secretary under the Law or these Regulations shall cease;
 - (c) any limited liability partnership property and any beneficial interest of the limited liability partnership in any limited liability partnership property vested in the dissolution manager pursuant to Regulation 9(6)(c) or 14(6)(c) shall vest in the insolvency manager; and
 - (d) any proceedings which might have been continued or commenced against the limited liability partnership, or against the dissolution manager pursuant to Regulation 9(6)(e) or 14(6)(d), may only be continued or commenced against the insolvency manager in the insolvency manager's capacity as such.
- (5) Where the name of the dissolution manager is inscribed in the Public Registry as the holder of, or as having an interest in, immovable property which vests in the insolvency manager by virtue of paragraph (4)(c), the insolvency manager shall deliver to the Judicial Greffier notice of the vesting, within 28 days after the property so vests.
- (6) Any judgment –
 - (a) obtained against the limited liability partnership prior to its dissolution, or obtained against its dissolution manager under Article 9(6)(f), which has not been satisfied before the limited liability partnership became insolvent, or



-
- (b) obtained against the insolvency manager in the insolvency manager's capacity as such in any proceedings continued or commenced in accordance with paragraph (4)(d),
shall only be enforceable against the limited liability partnership property.
 - (7) The insolvency manager shall, within 14 days of the insolvency manager's appointment, deliver notice thereof to the registrar and to the creditors.
 - (8) An insolvency manager who fails to comply with paragraphs (5) or (7) shall be guilty of an offence.

18 Appointment of insolvency committee

- (1) A creditors' meeting may appoint an insolvency committee consisting of not more than 5 persons to exercise the functions conferred on it by this Part.
- (2) If an insolvency committee is appointed, the partners of the limited liability partnership may appoint such number of persons not exceeding 5 as they think fit to act as members of that insolvency committee.
- (3) The creditors may resolve that all or any of the persons so appointed by the partners ought not to be members of the insolvency committee and, if the creditors so resolve –
 - (a) the persons mentioned in the resolution are not then, unless the Court otherwise directs, qualified to act as members of that insolvency committee; and
 - (b) on an application to the Court under this provision, the Court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

19 Remuneration of and vacancy in office of insolvency manager

- (1) An insolvency manager is entitled to receive such remuneration as is agreed between the insolvency manager and the insolvency committee or, if there is no insolvency committee, between the insolvency manager and the creditors or, failing any such agreement, as is fixed by the Court.
- (2) The creditors at a creditor's meeting may remove an insolvency manager other than an insolvency manager appointed by the Court.
- (3) If a vacancy occurs, by death, resignation or otherwise, in the office of the insolvency manager –
 - (a) the creditors may appoint another insolvency manager, except when the appointment in respect of which the vacancy now arises was by the Court; and
 - (b) the Court may appoint another insolvency manager upon an application made under Regulation 17(3) when the appointment of in respect of which the vacancy now arises was by the Court.



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- (4) Where a vacancy in the office of insolvency manager is filled, either by appointment by the creditors or by the Court, Regulation 17(4), (5), (6), (7) and (8) shall apply for the purposes of notification of the appointment to the registrar and the vesting of such property in, the continuation and commencement of such proceedings against and the payment of any amount to, the new insolvency manager as was formerly vested in or might have been continued or commenced against or paid to, the previous insolvency manager in the insolvency manager's capacity as such, as if any reference in them to the person responsible for winding up the affairs of the limited liability partnership were a reference to the previous insolvency manager and any reference to the insolvency manager were a reference to the new insolvency manager.

20 Appointment or removal by the Court of insolvency manager

- (1) If for any reason there is no insolvency manager in an insolvent winding up, the Court may appoint such a person.
- (2) The Court may, on the application of any person who appears to the Court to be an interested party, remove an insolvency manager and appoint another.

21 Reference of questions and powers to the Court

- (1) The insolvency manager, a partner in the partnership or a creditor of the partnership may apply to the Court for the Court to –
 - (a) determine a question arising in an insolvent winding up; or
 - (b) exercise all or any of the powers which the Court or the Viscount might exercise if a declaration had been made in relation to the limited liability partnership under the Bankruptcy (Désastre) (Jersey) Law 1990.
- (2) The Court may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.
- (3) An Act of the Court recording the making of an order under this Regulation staying the proceedings in the winding up shall, within 14 days after the making of the order, be delivered by the insolvency manager, or otherwise as may be ordered by the Court, to the registrar, who shall register it.
- (4) A person who fails to deliver an order to the registrar, as required by paragraph (3), shall be guilty of an offence.

22 Application of the law relating to désastre

- (1) Subject to paragraph (2), in an insolvent winding up, the same rules prevail with regard to –
 - (a) the respective rights of secured and unsecured creditors;
 - (b) debts provable;



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- (c) the time and manner of proving any debt;
 - (d) the admission and rejection of the proof of any debt;
 - (e) the setting off of any debts; or
 - (f) subject to the provision in Regulation 24(1), the order of payment of debts,

as are in force for the time being with respect to persons against whom a declaration has been made under the Bankruptcy (Désastre) (Jersey) Law 1990 with the substitution of references to the insolvency manager and to the commencement of the insolvent winding up respectively for references to the Viscount and to the date of the declaration.

- (2) Any surplus remaining after payment of the debts proved in the insolvent winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the insolvent winding up –
 - (a) in respect of the period during which they have been outstanding since the commencement of the insolvent winding up; and
 - (b) at the rate of interest that applied in respect of those debts before the winding up.

23 Arrangement when binding on creditors

- (1) An arrangement entered into between a limited liability partnership and its creditors immediately preceding the commencement of an insolvent winding up or in the course of an insolvent winding up, or between the insolvency manager and the creditors in the course of an insolvent winding up, is (subject to the right of appeal under paragraph (2)) binding –
 - (a) on the limited liability partnership; and
 - (b) on the creditors, if acceded to by three-quarters in number and value of them.
- (2) A creditor may, within 3 weeks from the completion of the arrangement, appeal to the Court against it and the Court may upon such appeal amend, vary or confirm the arrangement, as it thinks just.

24 Settling accounts on winding up

- (1) Where accounts are settled in the course of the winding up of the affairs of a limited liability partnership, the liabilities of the partnership shall be paid in the following order of priority –
 - (a) subject to the provisions of any enactment as to preferential payments, liabilities to creditors, excluding any partner or former partner in the limited liability partnership in respect of the partner's or former partner's partnership interest or in respect of any loan made by the partner or former partner to the partnership for any purpose; then
 - (b) subject to the partnership agreement and to any agreement between the partnership and the former partner in question –



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- (i) liabilities to former partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
 - (ii) liabilities to former partners in the limited liability partnership in respect of their partnership interests; then
 - (c) subject to the partnership agreement –
 - (i) liabilities to partners in the limited liability partnership in respect of any loans made by them to the partnership for any purpose, then
 - (ii) liabilities to partners in the limited liability partnership in respect of their partnership interests.
 - (2) Subject to the partnership agreement, any limited liability partnership property remaining after payment of the liabilities described in paragraph (1) shall be distributed equally to the partners.
 - (3) All costs, charges and expenses properly incurred in the winding up of an insolvent limited liability partnership, including the remuneration of the insolvency manager, are payable out of the limited liability partnership property in accordance with Regulation 22(1) and paragraph (1).

25 Meetings of insolvent limited liability partnership and creditors

- (1) If an insolvent winding up continues for more than 12 months, the insolvency manager shall call a meeting of the partners in the limited liability partnership and a meeting of its creditors, to be held on the first convenient date within 3 months after the end of the first 12 months from the commencement of the insolvent winding up, and of each succeeding 12 months or such longer period as the Commission may allow, and shall lay before the meetings an account of the insolvency manager's acts and dealings and of the conduct of the winding up during the preceding 12 months.
- (2) Notice of each meeting, together with a copy of the insolvency manager's account, must be served on the partners and creditors of the limited liability partnership not less than 21 days before the meeting.
- (3) For the purpose of paragraph (2) service shall be treated as having been effected –
 - (a) on a partner if the notice and account are delivered to the partner either by such means as the insolvency manager and the partner agree or, in the absence of any such agreement, in accordance with Article 25 of the Law; and
 - (b) on a creditor if the notice and account are delivered to the creditor either by such means as the insolvency manager and creditor agree, or in the absence of any such agreement, if they are served on the creditor by post.
- (4) An insolvency manager who fails to comply with paragraph (1) or (2) shall be guilty of an offence.



26 Insolvency manager's report on completion of winding up

- (1) As soon as the affairs of an insolvent limited liability partnership are fully wound up, the insolvency manager shall prepare a report of the winding up, showing how it has been conducted and how the limited liability partnership property has been disposed of, and thereupon shall call a meeting of the partners in the limited liability partnership and a meeting of its creditors for the purpose of laying the report before the meetings and giving an explanation of it.
- (2) Notice of each meeting, together with a copy of the insolvency manager's report of the winding up, must be served on the partners and creditors of the limited liability partnership not less than 21 days before the meeting.
- (3) For the purpose of paragraph (2) service shall be treated as having been effected –
 - (a) on a partner if the notice and account are delivered to the partner either by such means as the insolvency manager and the partner agree or, in the absence of any such agreement, in accordance with Article 25 of the Law; and
 - (b) on a creditor if the notice and report are delivered to the creditor either by such means as the insolvency manager and creditor agree, or in the absence of any such agreement, if they are served on the creditor by post.
- (4) An insolvency manager who fails to comply with paragraph (1) or (2) shall be guilty of an offence.

27 Completion of winding up

- (1) Within 7 days after the date of the meetings described in Regulation 26 (or, if they are not held on the same day, after the date of the later one) the insolvency manager shall deliver to the registrar –
 - (a) subject to paragraphs (2) and (3), a statement signed by the insolvency manager of the holding of the meetings and their dates; and
 - (b) a copy of the insolvency manager's report.
- (2) If a quorum is not present at the creditors' meeting, the insolvency manager shall, in lieu of the statement required by paragraph (1)(a), deliver to the registrar a statement that the meeting was duly called and that no quorum was present.
- (3) If all the partners, or so many of the partners as the partnership agreement requires, are not present at the partners' meeting, the insolvency manager shall, in lieu of the statement required by paragraph (1)(a), deliver to the registrar a statement that the meeting was duly called but not held.
- (4) An insolvency manager who fails to comply with paragraph (1), (2) or (3) shall be guilty of an offence.



28 Effect of declaration that a partnership is *en désastre*

- (1) Where a declaration, or an order recalling a declaration, is made in respect of a limited liability partnership, the limited liability partnership shall deliver a copy of the declaration or order to the registrar within 28 days of its being made.
- (2) Upon receiving a copy of a declaration or of an order recalling a declaration, the registrar shall register it and issue a certificate to that effect.
- (3) A limited liability partnership that fails to comply with paragraph (1) shall be guilty of an offence.
- (4) In this Regulation –
“declaration” shall have the same meaning as in the Bankruptcy (Désastre) (Jersey) Law 1990; and
“order recalling a declaration” shall be construed in accordance with Article 7 of that Law.

29 Cancellation of registration following insolvent winding up etc.

- (1) Upon receipt of –
 - (a) a statement delivered to the registrar under Regulation 27; or
 - (b) notification under Article 36(3) of the Bankruptcy (Désastre) (Jersey) Law 1990,in respect of an insolvent limited liability partnership, the registrar shall forthwith register the statement or notification.
- (2) Subject to paragraph (3), at the end of 3 months from the registration of the statement or notification, the registrar shall cancel the entry in the register relating to the limited liability partnership and issue a certificate of cancellation to the insolvency manager or the Viscount, as the case may require.
- (3) The Court may, on the application of the insolvency manager or Viscount, as the case may require, or of another person who appears to the Court to be interested, make an order deferring the date on which a certificate of cancellation of registration is issued to such date as the Court thinks fit.
- (4) The person on whose application an order of the Court under paragraph (3) is made shall, within 14 days after the making of the order, deliver to the registrar the order of the Court for registration.
- (5) A person on whose application the order is made who fails to comply with paragraph (4) shall be guilty of an offence.



30 Powers and duties of insolvency manager

- (1) An insolvency manager may, with the sanction of the Court or the insolvency committee (or, if there is no such committee, a meeting of the creditors) –
 - (a) pay a class of creditors in full;
 - (b) compromise any claim by or against the limited liability partnership, or by or against the dissolution manager or the insolvency manager under these Regulations.
- (2) An insolvency manager may, without sanction, do anything, other than an act within paragraph (1), that may be required for the beneficial winding up of the limited liability partnership's affairs.
- (3) An insolvency manager may summon a meeting of the partners of the limited liability partnership for the purpose of obtaining their sanction for any other purpose the insolvency manager may think fit.
- (4) The insolvency manager shall pay the debts of the limited liability partnership in accordance with this Part.
- (5) The appointment or nomination of more than one insolvency manager shall declare whether any act to be done is to be done by all or any one or more of them and, in default, any such act may be done by 2 or more of them.

31 Power to disclaim onerous property

- (1) The insolvency manager may, within 6 months after the commencement of the insolvent winding up, by the giving of notice signed by the insolvency manager and referring to this Regulation and Regulation 32 to each person who is interested in, or under any liability in respect of, the property disclaimed, disclaim any onerous movable property, or any onerous immovable property, and may do so notwithstanding that the insolvency manager has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) For the purposes of this Regulation –
 - (a) onerous movable property is any –
 - (i) unprofitable contract, and
 - (ii) other movable property of the limited liability partnership which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act;
 - (b) onerous immovable property is any immovable property of the limited liability partnership situated outside Jersey and having the characteristics mentioned in sub-paragraph (a)(ii).
- (3) A disclaimer under this Regulation –
 - (a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the limited liability partnership in or in respect of the property disclaimed; but



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- (b) shall not, except so far as is necessary for the purpose of releasing the limited liability partnership from liability, affect the rights or liabilities of any other person.
 - (4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Regulation shall be deemed to be a creditor of the limited liability partnership to the extent of the loss or damage in the winding up.

32 Power of Court in respect of disclaimed property

- (1) This Regulation applies where the insolvency manager has disclaimed property under Regulation 31.
- (2) An application may be made to the Court under this Regulation by –
 - (a) a person who claims an interest in the disclaimed property; or
 - (b) a person who is under a liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject to paragraph (4), the Court may, on an application under this Regulation, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –
 - (a) a person entitled to it or a trustee for such a person; or
 - (b) a person subject to a liability mentioned in paragraph (2)(b) or a trustee for such a person.
- (4) The Court shall not make an order by virtue of paragraph (3)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The effect of an order under this Regulation shall be taken into account in assessing for the purpose of Regulation 31(4) the extent of loss or damage sustained by a person in consequence of the disclaimer.

33 Unenforceability of liens on records

- (1) Subject to paragraph (2), in an insolvent winding up, a lien or other right to retain possession of any records of a limited liability partnership shall be unenforceable to the extent that its enforcement would deny possession of those records to the insolvency manager.
- (2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

34 Transactions at an undervalue and preferences

- (1) Where an insolvent limited liability partnership has at a relevant time –
 - (a) entered into a transaction with any person at an undervalue; or
 - (b) given a preference to any person,



the insolvency manager may apply to the Court for such order as the Court thinks fit for restoring the position to what it would have been if the limited liability partnership had not entered into that transaction or given that preference, as the case may be.

- (2) For the purposes of this Regulation, a limited liability partnership enters into a transaction with a person at an undervalue if the limited liability partnership –
 - (a) makes a gift to that person or otherwise enters into a transaction with that person on terms for which there is no “cause”; or
 - (b) enters into a transaction with that person for a “cause” the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the “cause” provided by the limited liability partnership.
- (3) For the purposes of this Regulation, a limited liability partnership gives a preference to a person if –
 - (a) that person is one of the creditors of the limited liability partnership or a surety or guarantor for any of the debts or other liabilities of the limited liability partnership; and
 - (b) the limited liability partnership –
 - (i) does anything, or
 - (ii) suffers anything to be done,

which has the effect of putting that person into a position which, in the event of the insolvent winding up of the limited liability partnership, will be better than the position the person would have been in if that thing had not been done.

- (4) The Court shall not make an order under this Regulation in respect of a preference given to any person unless the limited liability partnership which gave it was influenced in deciding to give it by a desire to produce in relation to that person the effect referred to in paragraph (3)(b).
- (5) Subject to paragraph (6), the time at which a limited liability partnership enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given –
 - (a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the date of commencement of the insolvent winding up;
 - (b) in the case of a preference which is not a transaction at an undervalue, at a time in the period of one year ending with that date.
- (6) Subject to paragraph (7), where a limited liability partnership enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (5)(a) or (b), that time is not a relevant time unless the limited liability partnership –
 - (a) is at that time unable to pay its debts as they fall due; or
 - (b) becomes unable to pay its debts as they fall due in consequence of the transaction or preference.



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- (7) Paragraph (6) shall not apply to a transaction at an undervalue which takes place less than 2 years before the date of commencement of the insolvent winding up.
 - (8) In this Regulation, “cause” has the meaning assigned to it by the customary law of Jersey.

35 Responsibility for wrongful trading

- (1) Where any limited liability partnership property, including a share in the partnership profits, is withdrawn by a partner at a time when the partnership is unable to pay its debts, or if the partnership becomes unable to pay its debts as a result of the withdrawal, the partner shall be liable for any debt or loss to which Article 4(1) of the Law applies, but the partner’s liability shall be limited to an amount equal to the value of the withdrawal, less any amount previously recovered from him by virtue of this Regulation or Article 5 or 12 of the Law.
- (2) Notwithstanding Article 5 of the Law but subject to paragraph (4), if, in the course of an insolvent winding up, it appears that paragraph (1) applies in relation to a person who is or has been a partner of the limited liability partnership, the Court, on the application of the insolvency manager, may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the limited liability partnership arising after the time referred to in paragraph (3).
- (3) This paragraph applies in relation to a person if –
 - (a) at some time before the date of commencement of the insolvent winding up that person –
 - (i) knew that there was no reasonable prospect that the limited liability partnership would avoid insolvency, or
 - (ii) on the facts known to the person was reckless as to whether the limited liability partnership would avoid insolvency; and
 - (b) that person was a partner in the limited liability partnership at that time.
- (4) For the purposes of paragraph (3), a person shall not be treated as having had knowledge of any matter by reason only that another partner in the limited liability partnership had such knowledge.
- (4) The Court shall not make an order under paragraph (2) with respect to any person if it is satisfied that after either condition specified in paragraph (3)(a) was first satisfied in relation to the person that person took reasonable steps with a view to minimizing the potential loss to creditors of the limited liability partnership.
- (5) On the hearing of an application under this Regulation, the insolvency manager may give evidence or call witnesses.



36 Responsibility for fraudulent trading

- (1) If, in the course of an insolvent winding up, it appears that any business of the limited liability partnership has been carried on with intent to defraud creditors of the limited liability partnership or creditors of another person, or for a fraudulent purpose, the Court may, on the application of the insolvency manager, order that persons who were knowing parties to the carrying on of the business in that manner are to be liable to make such contributions to the limited liability partnership property as the Court thinks proper.
- (2) For the purposes of paragraph (1) a partner in a limited liability partnership shall not be treated as having been a knowing party to the carrying on of the business in the manner described in that paragraph by reason only that another partner in the limited liability partnership was knowingly such a party.
- (3) On the hearing of an application under this Regulation the insolvency manager may give evidence or call witnesses.
- (4) Where the Court makes an order under this Regulation or Regulation 35, it may give such further directions as it thinks proper for giving effect to the order.
- (5) Where the Court makes an order under this Regulation or Regulation 35 in relation to a person who is a creditor of the limited liability partnership, it may direct that the whole or part of a debt owed by the limited liability partnership to that person and any interest thereon shall rank in priority after all other debts owed by the limited liability partnership and after any interest on those debts.
- (6) This Regulation and Regulation 35 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the order under paragraph (1) is to be made.

37 Extortionate credit transactions

- (1) This Regulation applies in an insolvent winding up where the limited liability partnership is, or has been, a party to a transaction for, or involving, the provision of credit to the limited liability partnership.
- (2) The Court may, on the application of the insolvency manager, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with the commencement of the insolvent winding up.
- (3) For the purposes of this Regulation, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –
 - (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
 - (b) it otherwise grossly contravened ordinary principles of fair dealing, and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Regulation is, or as the case may be, was extortionate.



- (4) An order under this Regulation with respect to a transaction may contain one or more of the following as the Court thinks fit –
- (a) provision setting aside the whole or part of an obligation created by the transaction;
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;
 - (c) provision requiring a person who is or was a party to the transaction to pay to the insolvency manager sums paid to that person, by virtue of the transaction, by the limited liability partnership;
 - (d) provision requiring a person to surrender to the insolvency manager property held by the person as security for the purposes of the transaction;
 - (e) provision directing accounts to be taken between any persons.

38 Application of provisions to insolvent limited liability partnership *en désastre*

Regulations 35, 36, and 37 shall apply to an insolvent limited liability partnership in respect of which a *désastre* is declared under the Bankruptcy (Désastre) (Jersey) Law 1990 as if –

- (a) any reference to an insolvent winding up was a reference to a *désastre*; and
- (b) any reference to the insolvency manager was a reference to the Viscount.

39 Delivery and seizure of property

- (1) Where a person has in the person's possession or control property or records to which a limited liability partnership appears in an insolvent winding up to be entitled, the Court may require that person forthwith (or within a period which the Court may direct) to pay, deliver, convey, surrender or transfer the property or records to the insolvency manager.
- (2) Where –
 - (a) the insolvency manager seizes or disposes of property which is not property of the limited liability partnership; and
 - (b) at the time of seizure or disposal the insolvency manager believes, and has reasonable grounds for believing, that the insolvency manager is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the insolvency manager shall not be liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the insolvency manager, and shall have a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.



40 Duty to co-operate with insolvency manager

- (1) In an insolvent winding up, each of the persons mentioned in paragraph (2) shall –
 - (a) give the insolvency manager information concerning the limited liability partnership and its establishment, business, dealings, affairs, or property which the insolvency manager may at any time after the commencement of the insolvent winding up reasonably require; and
 - (b) attend on the insolvency manager at reasonable times and on reasonable notice when requested to do so.
- (2) The persons referred to in paragraph (1) are –
 - (a) those who are, or have at any time been, partners in the limited liability partnership or have at any time held themselves out to be partners in the limited liability partnership;
 - (b) any person who is or has been a secretary of the limited liability partnership;
 - (c) those who are in the employment of the limited liability partnership, or have been in its employment within one year before the commencement of the insolvent winding up, and are, in the opinion of the insolvency manager, capable of giving information which the insolvency manager requires; and
 - (d) those who are, or have within that year been, partners in or in the employment of another partnership with separate legal personality which is or was a partner in the limited liability partnership in question or officers of, or in the employment of, any person who is or was a partner in the limited liability partnership in question.
- (3) For the purposes of paragraph (2), “employment” includes employment under a contract for services (*contrat de louage d’ouvrage*).
- (4) A person who fails to comply with paragraph (1) shall be guilty of an offence.

41 Insolvency manager to report criminal offences

- (1) If it appears to the insolvency manager that any person has been guilty of an act or omission in relation to the limited liability partnership for which that person is criminally liable, the insolvency manager shall –
 - (a) forthwith report the matter to the Attorney General; and
 - (b) furnish the Attorney General with information and give the Attorney General access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession of or under the control of the insolvency manager and relating to the matter in question) as the Attorney General requires.
- (2) Where a report is made to the Attorney General under paragraph (1), the Attorney General may refer the matter to the Chief Minister or the Commission for further enquiry; and the Chief Minister or the Commission, as the case may be –
 - (a) shall thereupon investigate the matter; and



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- (b) may also, if they think it necessary for the purposes of their investigation, investigate the affairs of –
- (i) any person mentioned in Regulation 40(2),
 - (ii) any company or partnership of which the limited liability partnership is or was a member, or
 - (iii) any director or employee of such a company, or any employee or partner of such a partnership,

and shall report upon the affairs of the partner, company, director or employee so far as they think that the results of their investigation of that person's affairs are relevant to the investigation of the affairs of the limited liability partnership.

- (3) The Chief Minister or the Commission may appoint one or more inspectors to carry out an investigation and report to him or her for the purposes of paragraph (2).
- (4) If it appears to the Court in the course of an insolvent winding up that any person has been guilty as mentioned in paragraph (1), and that no report with respect to the matter has been made by the insolvency manager to the Attorney General under that paragraph, the Court may (on the application of a person interested in the insolvent winding up or of its own motion) direct the insolvency manager to make such a report; and on a report being made accordingly this Regulation shall have effect as though the report had been made in pursuance of paragraph (1).

42 Obligations and powers arising under Regulation 41

- (1) If the Chief Minister, the Commission or an inspector appointed by either of them to carry out an investigation considers that any person is or may be in possession of information relating to a matter which they believe to be relevant to an investigation pursuant to Regulation 41(2), the Chief Minister, the Commission or inspector may require the person –
 - (a) to produce and make available to them all records in the person's custody or power relating to that matter;
 - (b) at reasonable times and on reasonable notice, to attend before them; and
 - (c) otherwise to give them all assistance in connection with the investigation which the person is reasonably able to give,

and it is that person's duty to comply with the requirement.
- (2) The Chief Minister, the Commission or an inspector appointed by either of them to carry out an investigation may, for the purposes of the examination, examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.
- (3) An answer given by a person to a question put to the person in exercise of the powers conferred by paragraph (1) may not be used by the prosecution in evidence against the person in any criminal proceedings except for the purposes of proceedings under paragraph (7) or Regulation 44.



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- (4) This paragraph applies where the Chief Minister, the Commission or an inspector appointed by either of them to carry out an investigation has reasonable grounds for believing that any employee, former employee, partner or former partner in, or director or former director of, the person whose affairs are being investigated maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Jersey or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that employee, former employee, partner, former partner, director or former director, towards the person or its remaining partners or its members, as the case may be.
 - (5) In a case where paragraph (4) applies, the Chief Minister, the Commission or the inspector may require the employee, former employee, partner, former partner, director or former director, as the case may be, or any of them, to produce and make available to the Chief Minister, the Commission or inspector, as the case may be, all records in the possession or control of the employee, former employee partner, former partner, director or former director, as the case may be, relating to that bank account.
 - (6) Where criminal proceedings are instituted by the Attorney General following a report or reference under Regulation 41 the insolvency manager and every partner, agent and employee of the limited liability partnership past and present (other than the defendant) shall give the Attorney General any assistance in connection with the prosecution which they are reasonably able to give; and for this purpose "agent" includes a banker, advocate or solicitor of the limited liability partnership and a person employed by the limited liability partnership as auditor.
 - (7) If a person fails or neglects to give assistance as required by paragraph (6), the Court may, on the application of the Attorney General, direct the person to comply with that paragraph; and if the application is made with respect to an insolvency manager, the Court may (unless it appears that the failure or neglect to comply was due to the insolvency manager not having in his or her hands sufficient assets of the limited liability partnership to enable him or her to do so) direct that the costs shall be borne by the insolvency manager personally.
 - (8) A person who knowingly or recklessly makes to the Chief Minister, the Commission or an inspector appointed by either of them any statement, whether written or oral, which conveys, or purports to convey, any information or explanation which the Chief Minister, the Commission or inspector requires, or is entitled to require, in the course of an investigation and is misleading, false or deceptive in a material particular, shall be guilty of an offence.

43 Authority for search

- (1) An inspector appointed under Regulation 41(3) may for the purpose of the investigation apply to the Bailiff for a warrant under this Regulation in relation to specified premises.



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- (2) If the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled the Bailiff may issue a warrant authorizing a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.
 - (3) The conditions referred to in paragraph (2) are –
 - (a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (b) that the investigation for the purposes of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.
 - (4) Where a person has entered premises in the execution of a warrant issued under this Regulation, the person may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.
 - (5) In this Regulation, “premises” includes any place and, in particular, includes –
 - (a) any vehicle, vessel, aircraft or hovercraft;
 - (b) any offshore installation; and
 - (c) any tent or movable structure.
 - (6) Any person who wilfully obstructs any person acting in the execution of a warrant issued under this Regulation shall be guilty of an offence.

44 Failure to co-operate with Chief Minister, Commission or inspector

- (1) If any person –
 - (a) fails to comply with a requirement under Regulation 42; or
 - (b) refuses to answer any question put to the person by the inspectors for the purpose of the investigation,the Chief Minister, the Commission or the inspector may certify the refusal in writing to the Court.
- (2) The Court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if the offender had been guilty of contempt of the Court.

45 Inspector's report to be evidence

- (1) A copy of a report of an inspector is admissible in legal proceedings as evidence of the opinion of the inspector in relation to a matter contained in the report if the copy has been certified to be a true copy by whichever of the Chief Minister or the Commission appointed the inspector.



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- (2) A document purporting to be a certificate mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

46 Privileged information

Nothing in this Part requires the disclosure or production to the Chief Minister or the Commission or to an inspector appointed by either of them –

- (a) by a person of information or records which the person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if the person is a lawyer, the name and address of the person's client;
- (b) by a limited liability partnership's bankers (as such) of information or records relating to the affairs of any of their customers other than the limited liability partnership or other person under investigation.

47 Enforcement of duty of partner or insolvency manager to make returns etc.

- (1) If, in an insolvent winding up, a partner or the insolvency manager who has defaulted in delivering a document or in giving any notice which the partner or insolvency manager is by law required to deliver or give, fails to make good the default within 14 days after the service on the partner or insolvency manager of a notice requiring the partner or insolvency manager to do so, the Court may, on an application made by a creditor or a partner, or by the registrar, make an order directing the partner or the insolvency manager to make good the default within the time specified in the order.
- (2) The Court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the partner or the insolvency manager personally.
- (3) Nothing in paragraph (1) prejudices the operation of any enactment imposing penalties on a partner or an insolvency manager in respect of a default mentioned therein.

48 Qualifications of insolvency manager

- (1) A person who is not an individual is not qualified to act as an insolvency manager.
- (2) A person is not qualified to be appointed as an insolvency manager unless the person is a member of –
 - (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the Association of Chartered Certified Accountants; or
 - (d) the Institute of Chartered Accountants in Ireland.
- (3) None of the following persons is so qualified –



- (a) a partner, former partner, officer, former officer, employee or former employee of the limited liability partnership;
 - (b) any partner in a partnership with separate legal personality which is itself a partner in the limited liability partnership;
 - (c) a secretary or former secretary of the limited liability partnership;
 - (d) any officer, former officer, employee or former employee of a company which is a partner in the limited liability partnership; or
 - (e) where a partner in the limited liability partnership is also a partner in another partnership, any partner in that partnership.
- (4) Notwithstanding paragraph (1), the Viscount, by virtue of the Viscount's office, is a person qualified for appointment as an insolvency manager.
- (5) The Chief Minister may by Order –
- (a) amend paragraph (2) by adding, deleting or substituting bodies therein, or adding classes of persons;
 - (b) amend paragraph (3) by adding, deleting, substituting or qualifying descriptions of persons therein.

49 Corrupt inducement affecting appointment as insolvency manager

A person who gives or agrees or offers to give a partner in or creditor of an insolvent limited liability partnership any valuable benefit with a view to securing the person's own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the insolvency manager, shall be guilty of an offence.

50 Notification by insolvency manager of resignation etc.

- (1) An insolvency manager who resigns, is removed or for any other reason vacates office shall, within 14 days after the resignation, removal or vacation of office, give notice thereof, signed by the insolvency manager, to the registrar and to the creditors.
- (2) An insolvency manager who fails to comply with paragraph (1) shall be guilty of an offence.

51 Notification of winding up of insolvent limited liability partnership

- (1) When an insolvent limited liability partnership is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the limited liability partnership or the insolvency manager, being a document on or in which the name of the limited liability partnership appears, shall contain a statement that the limited liability partnership is subject to an insolvent winding up.
- (2) An insolvency manager of an insolvent limited liability partnership who fails to comply with paragraph (1) shall be guilty of an offence.



52 Bar against other proceedings in bankruptcy

The winding up of an insolvent limited liability partnership under this Part bars the right to take any other proceedings in bankruptcy against the limited liability partnership except the right of a creditor to apply for a declaration under the Bankruptcy (Désastre) (Jersey) Law 1990.

53 Disposal of records

- (1) The Chief Minister may by Order specify the period or periods not exceeding 10 years from the cancellation of registration of the limited liability partnership during which the records of the insolvent limited liability partnership which has been wound up shall not be destroyed.
- (2) When an insolvent limited liability partnership has been wound up, and registration is about to be cancelled, its records and those of the insolvency manager must be retained in the way that the insolvency committee or, if there is no such committee, the creditors of the limited liability partnership may direct.
- (3) After 10 years from the cancellation of registration of the limited liability partnership, no responsibility rests on the limited liability partnership, the insolvency manager or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.
- (4) A person who acts in contravention of a direction made for the purposes of this Regulation shall be guilty of an offence.

PART 5**MISCELLANEOUS AND GENERAL****54 Recognition of proceedings in other jurisdictions**

- (1) This Regulation applies where an order is made by a court outside Jersey for the dissolution or winding up of the affairs of a limited liability partnership, and references in this Regulation to an order shall be construed accordingly.
- (2) For the purposes of this Law, a limited liability partnership shall not be taken to be dissolved by an order until that order has been recognized by the Court, but, once an order has been recognized by the Court, it shall be taken to be an order for the dissolution and winding up of the affairs of the limited liability partnership.
- (3) An application to the Court for recognition of an order may be made by the person appointed under it to wind up the affairs of the limited liability partnership or, if none, the person on whose application the order was made.
- (4) In determining whether or not to recognize an order the Court shall have regard to whether the grounds on which it is made would constitute grounds for dissolution in Jersey.



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- (5) Where the Court decides to recognize an order, it may also appoint a person to be responsible for winding up the affairs of the limited liability partnership and give such directions as it thinks fit as to the winding up.
 - (6) Where the Court decides to recognize an order in respect of a limited liability partnership, the limited liability partnership shall deliver a copy of the decision of the Court to the registrar within 28 days after it is made.
 - (7) Upon receiving a copy of the decision referred to in paragraph (6), the registrar shall register it and issue a certificate to that effect.
 - (8) A limited liability partnership that fails to comply with paragraph (6) shall be guilty of an offence.

55 Penalties

- (1) The penalty for an offence under Regulation 25(3) or 26(3) shall be a fine not exceeding level 2 on the standard scale.
- (2) The penalty for an offence committed under Regulation 5(3), 5(5), 6(4), 7(4), 9(8), 12(2), 14(8), 17(8), 21(4), 27(4), 28(3), 29(5), 53(4) or 54(8) shall be liable to a fine not exceeding level 4 on the standard scale.
- (3) The penalty for an offence under Regulation 15(6), 50(2) or 51(2) shall be a fine.
- (4) The penalty for an offence under Regulation 40(4) shall be 6 months imprisonment and a fine.
- (5) The penalty for an offence under Regulation 42(8), 43(6) or 49 shall be 2 years imprisonment and a fine.

56 Consequential amendment

In Regulation 23(4) of the Money Laundering (Jersey) Order 2008 for sub-paragraph (j) there shall be substituted the following sub-paragraph –

“(j) an inspector appointed by the Chief Minister under Regulation 42(3) of the Limited Liability Partnership (Jersey) Law 201-;”.

57 Citation and commencement

These Regulations may be cited as the Limited Liability Partnerships (Dissolution and Winding Up, etc.) (Jersey) Regulations 201- and shall come into force on the same day as the Law.



