

The Limited Liability Partnerships (Guernsey) Law, 2012

Consultation Document

Commerce and Employment Department
March 2012

Introduction

In April 2009¹ the States of Deliberation approved the introduction of legislation enabling the formation of Limited Liability Partnerships in Guernsey. As set out in that States Report:

“an LLP will be a new form of business structure that combines features from a traditional partnership with the limited liability available to shareholders in a company. LLPs have been introduced in several other jurisdictions and, while relatively new, are now widely used

The Department expects that LLPs primarily will be attractive to professional persons. However they may also be suitable for other purposes such as joint ventures. It is not intended that the availability of an LLP be restricted to any particular profession or trade; they will be available as an alternative business structure to suit particular needs.”

The purpose of this public consultation is to seek feedback on the draft legislation so that it can be finalised and presented to the States of Deliberation for approval. It is also to seek feedback on two key policy changes which will be the subject of a supplementary States Report which will accompany the legislation.

The consultation paper seeks input on a number of specific issues, as well as seeking general feedback and comments on the draft legislation.

Policy Changes

The 2009 States Report contained two key policy proposals which the Department will recommend to the States be changed:

- The ability for LLP's to elect to have separate legal personality, and
- The obligation for the members agreement to be filed with the Company Registry

Election of Separate Legal Personality

The States Report recommended that an LLP should be entitled to make an election to be unincorporated in the same way as a traditional partnership or to have separate legal personality similar to that of a Company. This would provide for maximum flexibility.

However, in preparing the draft legislation it became apparent that this policy proposal was difficult to achieve given the primary purpose of the legislation which was to enable members of an LLP to limit their liability for the actions of other members. This was the overriding objective. In order to achieve that separation of liability it became apparent that this was only achievable through the imposition of a separate legal person between the partners. Without legal personality it was very

¹ See Article XI of Billet d'Etat No. XI, 2009

difficult to prepare legislation which ensured that members of an LLP remained liable for their own negligence but were protected from the negligence of other partners. While it may have been technically possible to create the necessary provisions in the legislation the result would have been overly complex and likely to be less certain.

As a result after discussions with the Law Officers Chambers it was decided that the legislation should proceed on the basis that all LLPs would have separate legal personality.

Filing of the Partnership Agreement

The 2009 States Report provided that the members agreement would need to be in writing and filed with the Company Registrar. As the legislation was developed the rationale for filing the members agreement was called into question as that would result in the LLP structure being unattractive for collective investment schemes where the investment strategy of the LLP would be on the public record.

Accordingly it is proposed that the members' agreement must be in writing and kept at the Registered Office in Guernsey but need not be filed with the Registrar. The agreement will be available to the members and also to the authorities in Guernsey to ensure full exchange of information in accordance with Guernsey's international treaty obligations.

Question 1: Do you have any comments on these proposals?

Tax Transparency

In order to ensure that the LLP structure is suitable for use by partnerships it is important to ensure that it is taxed in the same way as general partnerships. In a general partnership the partnership is not liable for tax, rather the partners themselves are liable to be taxed on their share of the partnership profits. In order to achieve this result the legislation contains the following key elements:

- Section 2 provides that the property of the LLP will be held by it but on trust for the benefit of the members.
- Section 15(3)(a) provides that subject to the members' agreement, all members of the LLP have the right to share in the profits of the LLP as and when they arise,
- Section 15(3)(b) provides that, subject to the membership agreement, all members may participate in the management of the LLP.

It is believed that those are key criteria to ensure that an LLP will be considered to be tax transparent for the purposes of Guernsey Law and elsewhere. Nevertheless to ensure certainty it is proposed to amend the Income Tax legislation to ensure that domestically a Guernsey LLP will be treated as tax transparent. Those provisions will

be included in the Schedule to the Law as part of the consequential amendments provisions.

Question 2: Are there any other key elements that you believe should be a feature of an LLP to ensure that a Guernsey LLP will be treated in the same way as an ordinary partnership for tax purposes?

Personal Liability of Members

Section 5 of the States Report outlines how the liability of the members of the LLP may be limited. It is clear that the overriding policy objective was to allow each member to have limited liability for the acts and omissions of the other members of the LLP. However it would not be permissible for a member of an LLP to have limited liability for his or her own acts or omissions.

This is similar to the position in the United Kingdom as well as other jurisdictions which permit the formation of LLPs. However in many jurisdictions the extent to which a member of an LLP remains personally liable has been subject to considerable litigation. That litigation has created a degree of uncertainty about when an individual member may be personally liable for his or her own acts and omissions. In order to ensure greater certainty for Guernsey LLPs section 5 of the draft legislation provides that when an LLP contracts with a third party any duty of care or fiduciary duty which arises will be owed by the LLP and not the members. However, where a duty of care or fiduciary duty does arise then that duty will be jointly and severally also be owed by one or more of the members only where:

- The member informs the third party that he or she assumes personal responsibility for the work performed, or
- The member performs the work in his or her capacity as a member of a profession whose members owe a fiduciary duty to their clients in the normal course of business.

That will ensure that there is clarity surrounding when a member of an LLP will be jointly and severally liable along with the LLP

Question 3: Do these provisions provide sufficient certainty surrounding when a member will be personally liable?

Unfair Prejudice and Statutory Derivative Claims

Unfair Prejudice

In many jurisdictions shareholders in a company are entitled to take legal action before the Courts where they consider that the company is being run in a manner which is prejudicial to their interests. In many jurisdictions this type of an action has been codified and included in the company law. In Guernsey this is contained in part XIX of the Company Law. The unfair prejudice action developed to allow shareholders to hold the company directors to account and ensure that the company was being run in a manner which benefited the shareholders as a whole.

The Derivative Action

A related cause of action is the derivative action which is where a shareholder can bring an action in the name of the company in the following circumstances:

- The company has a claim against a third party which it could pursue in Court,
- The directors of the company have elected not to proceed with that action,
- The shareholder can establish that the decision not to proceed with the action is not in the best interests of the company.

The derivative action arose under the common law and was known as the rule in *Foss v Harbottle*. Many jurisdictions have now codified this common law claim and included certain procedural steps in their company law.

The application of these rules to LLPs

These two remedies were developed due to the fact that the directors are responsible for the management of a company. Shareholders own the company but had limited rights to interfere in the decisions of the directors. Minority shareholders could find their interests prejudiced by decisions of the directors. The courts therefore developed actions for unfair prejudice and derivative claims to enable minority shareholders to protect their interests.

In the United Kingdom (and elsewhere) these common law principles have been applied to other forms of bodies corporate such as LLPs.

LLPs are unlike companies in several key respects. Firstly, unlike the shareholders of a company, all the members of the LLP have a right to be involved in the day to day management of the LLP. Secondly the LLP is designed to be a more flexible structure by which members may agree amongst themselves how their own business is to be governed.

It is therefore proposed to introduce both the unfair prejudice and statutory derivative action into the draft LLP Law but enable the members of the LLP to exclude both causes of actions by way of the member's agreement. These changes deal with issues which have arisen under UK Law which the Department is trying to address.

Question 4: Do you agree that the members, though the members agreement, should be entitled to exclude claims of unfair prejudice or the statutory derivative action?

General Comments

The Department invites any other general comments on the draft law. Please ensure that any substantive comments on the Law include the following:

- A description of the issue to which the comment is addressed?
- An explanation of why the draft law ought to be amended?
- An outline of any proposed amendments.

Question 5: Do you have any other comments on the draft Law?

Responding to this Consultation

The Department invites any and all comments on the draft law. The Department would prefer all comments to be provided by email and preferable in "Word" compatible format. The period for consultation runs from **26 March 2012 until Friday 4 May 2012**.

Once all consultation responses have been received the Department will analyse those comments and finalise the draft legislation for presentation to the Legislation Select Committee and then the States of Deliberation. The Department is aiming to have the legislation presented to the September sitting of the States however it will depend on the consultation feedback. If, following the consultation, the legislation requires substantial amendment then that timetable may not be achievable.

Consultation Responses may be sent to:

Preferred Option: finance@commerce.gov.gg

Alternatively: Limited Liability Partnerships Consultation
c/o Director, Finance Sector Development
Commerce & Employment Department
Raymond Falla House
Longue Rue
St Martins
Guernsey GY1 6AF

For further information please contact: Jarrod Cowley-Grimmond on 01481 749565

Appendix 1 – Summary of Questions

- Question 1 Do you agree with these proposals, if not please explain why?
- Question 2 Are there any other changes necessary to ensure that a Guernsey LLP will be taxed in the same way as an ordinary general partnership?
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- Question 4 Do you agree that the members, through the members agreement, should be entitled to exclude claims of unfair prejudice or the statutory derivative action?
- Question 5 Do you have any other comments on the draft law ?

Please ensure that any substantive comments on the Law include the following:

- o A description of the issue to which the comment is addressed?
- o An explanation of why the draft law ought to be amended?
- o An outline of any proposed amendments.

PROJET DE LOI

ENTITLED

The Limited Liability Partnerships (Guernsey) Law, 2012

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The Limited Liability Partnerships (Guernsey) Law, 2012

THE STATES, in pursuance of their Resolution of the 29th day of April, 2009², have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I

FORMATION AND ATTRIBUTES

Introductory

Limited liability partnerships.

1. (1) A limited liability partnership (an "**LLP**") may be formed in Guernsey for the carrying on within Guernsey or elsewhere of any lawful business with a view to profit, or any other lawful activity.

(2) An LLP shall have two or more members who are admitted to the LLP in accordance with the members' agreement.

²

Article XI of Billet d'Etat No. XI, 2009.

(3) An LLP is a body corporate and has legal personality separate from that of its members.

(4) An LLP is formed by being incorporated under this Law.

(5) For the avoidance of doubt, a change in the members of an LLP shall not affect its existence, rights or obligations.

(6) Subject to subsection (7) and section 14, the following may be a member of an LLP–

(a) a natural person,

(b) a body corporate, and

(c) a limited partnership, whether or not it has legal personality.

(7) The States may by Ordinance add to or otherwise modify the list in subsection (6).

LLP property to be held on trust.

2. (1) The property of an LLP shall be held on trust in accordance with subsection (2).

(2) Property of an LLP which is -

- (a) transferred to or vested in the name of the LLP (whether by a member of otherwise), or
- (b) transferred to, vested in or held on behalf of any member,

shall be held or, as the case may be, deemed to be held by the LLP on trust for the benefit of the members jointly in accordance with the terms of the members' agreement.

(3) References in this Law to the property of an LLP, and cognate expressions, shall be construed accordingly.

Capacity of LLP.

3. An LLP has the same capacity as a company incorporated in Guernsey with unrestricted objects.

Members' agreement.

4. (1) Every LLP shall have a members' agreement.

(2) The members' agreement shall be an agreement in writing of the members as to the affairs of the LLP and the conduct of its business, and shall be enforceable as if it were a contract between all the members and the LLP.

(3) For the avoidance of doubt, the members' agreement may provide that the

business of the LLP shall not be conducted in a way that does not benefit one or more of the members.

(4) The members' agreement shall be binding upon the members and their assigns and upon subsequent members in the same manner as if those persons had themselves executed it.

(5) The members' agreement may be amended only by an instrument in writing executed in accordance with the members' agreement.

(6) All amendments duly made to the members' agreement shall be binding upon the persons and in the manner mentioned in subsection (4).

Limited liability of members.

5. (1) Except as far as otherwise provided by the members' agreement, a debt of an LLP is solely the obligation of that LLP, to be met out of the property of the LLP.

(2) A member of an LLP is not personally liable, directly or indirectly, for a debt referred to in subsection (1) solely by reason of being a member of that LLP.

(3) Subject to subsection (4), where an LLP contracts with a third party, any duty of care and any fiduciary duty owed to the third party by virtue of that contract is owed by the LLP and not by any of its members.

(4) Where a duty of the type referred to in subsection (3) arises in the circumstances set out there, that duty will be owed by a member of the LLP, jointly and

severally with the LLP, if –

- (a) that member informs the third party that he assumes personal responsibility for work performed under that contract, or
- (b) that member performs work under that contract in his capacity as a member of a profession whose members owe a fiduciary duty to their clients in the normal course of business,

and, for the avoidance of doubt, any contractual provision or other agreement to the contrary shall be of no effect.

Office of the Registrar of LLPs, etc.

6. Schedule 1 (which makes provision in relation to the establishment of the Registrar and related matters) shall have effect.

Resident agents.

7. (1) If, at any time, no members of an LLP are Guernsey licensed fiduciaries, the LLP must have a resident agent.

- (2) A resident agent must be –
 - (a) resident in Guernsey, and
 - (b) a Guernsey licensed fiduciary.

- (3) A resident agent may request –
- (a) copies of the members' agreement,
 - (b) the accounts, records and underlying documents of the LLP,
and
 - (c) any other documents or information necessary for the resident agent to comply with his duties as a licensed fiduciary

at any time, by making a request in writing to the LLP.

Resident agent requests.

8. If a resident agent requests information under section 7 and on receipt of such request, the LLP refuses to provide the resident agent which the information requested then -

- (a) the agent may apply to Registrar to be removed as resident agent,
- (b) the Registrar on receipt of such application must, if satisfied that it is properly made, grant the application, on one month's notice to the LLP, and
- (c) section 65 (Striking defaulting LLP off the Register) applies.

Incorporation

Incorporation **of** **LLP.**

9. (1) An LLP must be incorporated in accordance with this section.

(2) Only a corporate services provider may apply to effect the incorporation of an LLP.

(3) A corporate services provider applying to effect the incorporation of an LLP shall file with the Registrar such fee as the Department may prescribe and a statement in such medium and form as the Registrar may prescribe, to which every person who is to be a member of the LLP has subscribed his name (a "**incorporation statement**"), containing the following particulars –

- (a) the name of the LLP,
- (b) the name and address of the resident agent (if any)
- (c) the nature and principal place of its business,
- (d) the address of its registered office, which must be situate within Guernsey, and
- (e) such other information as may be specified in regulations made by the Department.

(4) The incorporation statement may also propose the date on which the incorporation shall take effect, provided that that date is not later than 3 months after the date

of the application.

(5) The Registrar may, in any particular case, require the incorporation statement to be verified in such manner as he considers fit.

(6) On receiving the incorporation statement and prescribed fee, and being satisfied that the incorporation statement complies with the provisions of this section, the Registrar shall, subject to the provisions of this Law, register the LLP, issue a certificate of incorporation in such form as the Registrar may determine, and allocate a registration number to the LLP.

(7) The LLP is incorporated on the date of issue of the certificate of incorporation by the Registrar, and the certificate of incorporation is conclusive evidence that the LLP is incorporated, and registered by the name specified in the certificate.

(8) If the incorporation statement proposes a date on which the incorporation is to have effect and that date is later than the date on which the Registrar issues the certificate of incorporation, then the date stated on the certificate as the date of incorporation shall be the proposed date.

Change in registered particulars.

10. (1) An LLP must ensure that –

(a) where a person becomes or ceases to be a member, or

(b) where there is any change in any particular referred to in

section 9(3),

notice of the change shall be delivered to the Registrar within 21 days beginning on the date of the change.

(2) A notice delivered under subsection (1) –

(a) shall be in a form approved by the Registrar,

(b) shall be accompanied by such fee as the Department may prescribe, and

(c) shall be signed by a member of the LLP or authenticated in a manner approved by the Registrar,

and, if it relates to a person becoming a member, shall contain a statement that he consents to becoming a member signed by him or authenticated in a manner approved by the Registrar.

(3) If an LLP fails to comply with subsection (1), the LLP is liable to a civil penalty.

(4) For the avoidance of doubt, a failure by an LLP to comply with subsection (1)(a) does not affect the person becoming or ceasing to be a member.

Names of LLPs.

11. Schedule 2 (which makes provision in relation to the names of LLPs) shall have effect.

Application to change name.

12. (1) An application may be made to the Registrar to change the name of an LLP in accordance with the provisions of this section.

(2) The application shall be in the form required by the Registrar and shall be accompanied by such fee as the Department may prescribe.

(3) If the Registrar grants the application for change of name he shall -

(a) issue a certificate of change of name, and the certificate shall state the date upon which the certificate has effect,

(b) register the new name of the LLP in the Register, and

(c) publish the new name in such manner as he thinks fit for three months.

(4) If, during the period of three months referred to in subsection (3)(c), a person objects to the LLP's new name to the Registrar, the Registrar may, at his absolute discretion, require the LLP to revert to its previous name, or propose an alternative name to it; and if the LLP is required to revert to its previous name, or accepts the proposed alternative name, then the Registrar shall take the steps set out in subsection (3) in respect of that previous or alternative name.

(5) For the avoidance of doubt, where an LLP changes its name by virtue of this section, on and from the date of registration of the change of name –

- (a) all property and rights to which it was entitled immediately before the change remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts and debts to which it was subject immediately before the change,
- (c) all actions and other legal proceedings which, immediately before the change, were extant or pending by or against it may be continued by or against it in the new name, and
- (d) a conviction, ruling, order or judgment in favour of or against it before the change may be enforced by or against it after the change.

Reservation of names.

13. (1) The following persons may apply to the Registrar to reserve a name for an LLP –

- (a) a corporate services provider intending to effect incorporation of the LLP in accordance with section 9, and
- (b) a member of an LLP intending to apply to the Registrar for a change of name in accordance with section 12.

(2) An application under this section must be in the form prescribed by the Registrar.

(3) Where a name has been reserved under this section and for the period for which it is reserved, that name -

(a) cannot be used in an application for registration of an LLP, a limited partnership or a company except by or with the consent of the person who reserved that name, and

(b) cannot be reserved by any other person.

(4) A reservation under this section lapses after a period of 3 months beginning on the date the reservation was made.

(5) The Registrar may -

(a) refuse an application to reserve a name, or

(b) revoke a reservation already made,

if the name breaches any of the provisions of Schedule 2.

(6) The Registrar may refuse to register a name, notwithstanding that it has already been reserved, if it breaches any of the provisions of Schedule 2.

Members of an LLP

Members.

- 14.** (1) An LLP shall have at least two members.
- (2) The following persons shall not be members of an LLP –
- (a) a person who is subject to a disqualification order under Part V of this Law, or under Part XXV of the Companies (Guernsey) Law, 2008³ ("**the Companies Law**"), or under any equivalent provision in a district, territory or place outside Guernsey
 - (b) a person subject to a disqualification order under section 67A of the Companies (Guernsey) Law, 1994⁴, or

³ No. VIII of 2008; amended by No. XXV of 2008; Ordinance No. LIV of 2008; Ordinance No. VII of 2009; Ordinance No. XIV of 2009; SI No. 34 of 2009); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010).

⁴ Order in Council No. XXXIII of 1994; amended by No. XIV of 1996; No. I of 2001; No. II of 2002; No. IX of 2006; and by Ordinance No. X of 1997; Ordinance No. XXXIII of 2003 and Ordinances XI, XII and XVIII of 2006. For commencement, see section 124 below. No. XIV of 1996 came into force on the 1st March, 1997 (Ordinance No. VI of 1997), No. I of 2001 on the 1st June, 2001 (Ordinance No. IV of 2001) and No. II of 2002 on the 21st January, 2002.

- (c) a person who is disqualified, by reason of misconduct or unfitness, from acting as a director of a company or as a councillor of a foundation under the law of a district, territory or place outside Guernsey

subject to the terms of that order or disqualification.

(3) Admission to the membership of an LLP in contravention of subsection (2) is void.

(4) Nothing in this section affects the liability of a person under any provision of this Law if he purports to act as a member of an LLP although he could not, by virtue of this section, be validly admitted to the membership of an LLP.

(5) On the registration of an LLP its members are the persons who subscribed their names to the incorporation statement (other than any who have since died or been dissolved).

(6) Subject to the provisions of the members agreement, any other person may become a member of an LLP by and in accordance with an agreement with the existing members.

(7) A person may cease to be a member of an LLP (as well as by death or dissolution) in accordance with the members' agreement or, in the absence of provision in the members' agreement as to cessation of membership, by giving at least three months' notice in writing to the other members.

(8) A member of an LLP shall not be regarded for any purpose as employed by the LLP unless, if he and the other members were members in a partnership, he would be regarded for that purpose as employed by the partnership.

(9) An employee, officer or servant of an LLP shall not be regarded as a member of that LLP unless his name appears on the list of members kept at the registered office of the LLP pursuant to section 22(1).

(10) Unless the members' agreement otherwise provides, if a member of an LLP is declared bankrupt –

(a) his bankruptcy shall not by itself cause him to cease to be a member of the LLP, and

(b) any Commissioner, Committee of Creditors, liquidator or administrator appointed shall not interfere in the management of the LLP but shall be entitled to receive distributions from the LLP that the bankrupt member is entitled to receive under the members' agreement.

(11) Nothing in this section affects the liability of a person under any provision of this Law if he purports to act as a member of an LLP even though he could not, by virtue of this section, be validly admitted to the membership of an LLP.

Relationship of members, etc.

15. (1) Except as far as otherwise provided by this Law, the mutual rights and duties of the members of an LLP, and the mutual rights and duties of an LLP and its

members, shall be governed by the members' agreement.

(2) An agreement made before the registration of an LLP between the persons who subscribe their names to the incorporation statement may impose obligations on the LLP (to take effect at any time after its registration).

(3) Unless the members' agreement otherwise provides –

- (a) all the members of an LLP are entitled to share equally in the profits of the LLP as and when those profits arise,
- (b) every member may take part in the conduct and management of the LLP, and
- (c) each member must render true accounts and full information of all things affecting the LLP to any member or his legal representative.

Ex-members.

16. (1) This section applies where a member of an LLP has either ceased to be a member or -

- (a) has died,
- (b) has assigned the whole or any part of his share in the LLP, or

(c) is being wound up or is in liquidation.

(2) Subject to subsection (3), in such an event the former member or -

(a) his personal representative,

(b) his assignee, or

(c) its liquidator

may not interfere in the management or administration of any business or affairs of the LLP, unless such interference is provided for in the members' agreement or all the members otherwise agree to it.

(3) Subsection (2) does not affect any right of that former member to receive an amount from the LLP in that event.

Corporate Capacity

Corporate capacity.

17. The validity of an act done by an LLP shall not be called into question on the ground of lack of capacity by reason of anything contained in or omitted from the members' agreement.

Formalities of doing business

Members as agents.

18. (1) Every member of an LLP is the agent of the LLP with power to bind the LLP, but an LLP is not bound by anything done by a member in dealing with a person if –

- (a) the member in fact has no authority to act for the LLP by doing that thing, and
- (b) the person knows that he has no authority or does not know or believe him to be a member of the LLP.

(2) Where a person has ceased to be a member of an LLP, the former member is to be regarded (in relation to any person dealing with the LLP) as still being a member of the LLP unless –

- (a) the person has notice that the former member has ceased to be a member of the LLP, or
- (b) notice that the former member has ceased to be a member of the LLP has been delivered to the Registrar.

Contract may be made on behalf of LLP.

19. A contract may be made on behalf of an LLP, by a person acting under its authority, express or implied.

Execution of documents.

20. A document is executed for and in the name of an LLP by signature of a member of the LLP.

LLP may give power of attorney.

21. (1) An LLP may, by power of attorney, empower any person, either generally or in respect of any specified matter, to represent it, act in its name and execute documents on its behalf, and such a power -

- (a) is not valid unless signed by a member of the LLP, and
- (b) is, unless it states otherwise, capable of use in any place in Guernsey or elsewhere.

(2) This section -

- (a) is without prejudice to the provisions of section 34 of the Trusts (Guernsey) Law, 2007⁵, and
- (b) for the avoidance of doubt, has effect notwithstanding the provisions of the Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law, 1995⁶.

⁵ Approved by the States of Deliberation on the 25th July, 2007.

⁶ No. V of 1995.

PART II

RECORD KEEPING

Records and accounts.

22. (1) An LLP shall keep the following or a copy thereof at its registered office -
- (a) a list of all members,
 - (b) the name and address of its registered agent (if any),
 - (c) the members' agreement,
 - (d) its accounting records, which shall be -
 - (i) sufficient to show and explain the LLP's transactions, including a record of all contributions and loans to and from members,
 - (ii) sufficient to show and explain that, without prejudice to section 2, the LLP's property is kept separate from the property of its members,
 - (iii) such as to disclose with reasonable accuracy, at any time, the LLP's financial position at that time, and

- (iv) such as to enable the members to ensure that the LLP's balance sheet and profit and loss account are prepared properly and in accordance with any relevant enactment for the time being in force,
- (e) the minutes of all meetings of the members, and
- (f) all documents from time to time filed with the Registrar (including, without prejudice to the generality of the foregoing, the incorporation statement).

(2) All documents or copy documents required by subsection (1) to be kept at the LLP's registered office shall, subject to the provisions of the members' agreement, be available for inspection by any member during ordinary business hours.

(3) Any accounting records which an LLP is required by this section to keep shall be preserved by it for a period of at least 6 years from the date on which they are made.

(4) Any account, record or other document required by this Law to be kept by an LLP may be kept either by making entries in books or by recording the matters in question in any other manner including, without prejudice to the generality of the foregoing, a non-legible form.

(5) If any such account, record or other document is kept not by making entries in a book but in some other manner-

- (a) it is deemed for the purposes of this Law to be kept at a place if access to it and written copies of it can be obtained at that place,
- (b) adequate measures shall be taken for guarding against its falsification and for facilitating its discovery and production, and
- (c) if the matters in question are recorded in a non-legible form, the recording shall be capable of being reproduced in a legible form.

(6) If in respect of an LLP there is a contravention of any provision of this section, the LLP and each member thereof shall be guilty of an offence.

(7) Any duty imposed by law to allow inspection, or to furnish a copy, of any account, record or other document required by this Law to be kept by an LLP shall be treated, where the matters in question are recorded in a non-legible form, as a duty to allow inspection, or to furnish a copy, of the relevant part of the recording in a legible form.

Duty to submit annual validation.

23. In each calendar year before the 31st January, every LLP registered before 1st December in the previous calendar year shall -

- (a) complete an annual validation, in the medium and form prescribed in regulations made by the Registrar, containing information current on the 31st December in that previous year,

- (b) deliver to the Registrar -
 - (i) the annual validation and
 - (ii) a declaration of compliance (annual validation), as defined in section 24, and
- (c) file a copy of the annual validation in a register kept by the LLP for that purpose.

Declaration of compliance (annual validation).

24. (1) A declaration of compliance (annual validation) is a declaration, signed by at least one member, that the requirements of this Law in respect of the annual validation have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to the annual validation, the provisions of this Law have been complied with.

(3) A person who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

Content of annual validation.

25. The annual validation shall be in such form as is prescribed by regulations

issued by the Department, and shall state the particulars set out at section 9(3) and such other particulars as the Registrar may direct.

Failure to submit annual validation.

26. (1) An LLP which fails to comply with section 23 or 25 is guilty of an offence and in addition liable to a daily default fine.

(2) An LLP which fails to comply with section 24 or 25 is liable to be struck off the Register in accordance with Part VI (Striking Off).

(3) An annual validation and declaration of compliance (annual validation) which has been delivered to the Registrar which does not comply with all the requirements of this Part shall be treated as if it has not been delivered to the Registrar.

PART III

CONVERSION OF FIRM TO LLP

Eligibility for conversion.

27. (1) A firm may apply to convert to an LLP in accordance with this Part only if the members of the LLP to which the firm is to be converted comprise all the partners of the firm and no-one else.

(2) In this Part, "**firm**" has the meaning given in the Partnership (Guernsey) Law, 1995⁷, and "**convert**", in relation to a firm converting to an LLP, means a transfer of the property, interests, rights, privileges, and debts and the undertaking of the firm

⁷

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to the LLP in accordance with the provisions of this Part, and "**conversion**" shall be construed accordingly.

Registration of conversion.

28. (1) A firm may apply to convert to an LLP by filing with the Registrar –

(a) a statement by all the partners in such a form as the Registrar may prescribe containing the name of the firm, the names of all the partners in the firm, and such other information as the Registrar may prescribe,

(b) an incorporation statement referred to in section 9(3), and

(c) such fee as the Department may prescribe.

(2) The Registrar may, in any particular case, require the statements referred to in subsection (1) to be verified in such manner as he thinks fit.

(3) On receiving the statements and the fee referred to in subsection (1), and being satisfied that the incorporation statement complies with the provisions of section 9(3), the Registrar shall, subject to the provisions of this Law, register the LLP and issue a certificate of incorporation in such form as he may determine.

(4) The certificate of incorporation is conclusive evidence that the requirements of this section have been complied with, that the LLP is incorporated, and that it is registered with the name specified in the certificate.

Effect of incorporation.

29. (1) Subject to section 30, on and from the date of the incorporation of the LLP –

(a) all property vested in the firm, and all interests, rights, privileges, and debts relating to the firm shall be transferred and vest in the LLP without further assurance, act, instrument or deed, and

(b) the firm shall be dissolved.

(2) All proceedings by or against the firm which are pending on the date of incorporation of the LLP may be continued, completed and enforced by or against the LLP, and any conviction, ruling, order or judgment in favour of or against the firm may be enforced by or against the LLP.

(3) All agreements, contracts, bonds, deeds, schemes, instruments, arrangements, security, guarantees, indemnities, approvals and licences subsisting immediately before the date of incorporation of the LLP to which the firm is a party, or otherwise relating to the firm, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall continue in force on and after that date as if they relate to the LLP and shall be enforceable by or against the LLP as if the LLP were a party thereto or otherwise named therein (as appropriate) instead of the firm.

(4) For the avoidance of doubt, every contract of employment to which subsection (3) applies shall continue in force on and after the date of incorporation of the LLP as if the LLP were the employer thereunder instead of the firm.

(5) A conversion under this Part shall not be regarded as giving rise to any remedy, by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

(6) Every appointment of the firm in any role or capacity which is in force immediately before the date of incorporation shall have effect from that date as if the LLP were appointed, and any authority or power conferred on the firm which is in force immediately before the date of the incorporation of the LLP shall have effect from that date as if it were conferred on the LLP.

Partner liable for liabilities of firm before conversion.

30. (1) Every partner of a firm that has converted to an LLP shall continue to be personally liable, jointly and severally with the LLP, for the debts of the firm which were incurred before conversion or which arose from any contract entered into before conversion.

(2) If such a partner discharges any such debt, he shall be entitled, subject to any provision in the members' agreement to the contrary, to be fully indemnified by the LLP in respect of that debt.

Notice of conversion.

31. (1) An LLP that has converted from a firm shall ensure that for a period of 12 months from the date of incorporation of the LLP that all correspondence of the LLP and every invoice issued by it bears –

(a) a statement that, on the date of registration of the LLP, it

converted from a firm to an LLP, and

(b) the name of the firm from which it was converted.

(2) An LLP that fails to comply with subsection is liable to a civil penalty.

Power to make Ordinances in respect of conversions.

32. The States may by Ordinance make such provision as they think fit in respect of –

(a) the conversion of bodies other than firms, both corporate and unincorporated, into LLPs, and

(b) the conversion of LLPs into such bodies.

PART IV

MIGRATIONS

Registration of an overseas LLP as a Guernsey LLP

Overseas LLP may be registered as a Guernsey LLP.

33. (1) An overseas LLP may apply to the Registrar to be registered as a Guernsey LLP in accordance with the provisions of this Part.

(2) In this Part "**registered as a Guernsey LLP**" means -

- (a) ceasing to be registered as an LLP in the district, territory or place in which it was incorporated or where it is now registered, and
- (b) becoming registered as an LLP in the Register,

and "**registration as a Guernsey LLP**" shall be construed accordingly; and "**an overseas LLP**" means an LLP incorporated or registered outside Guernsey.

Registration must be authorised by foreign law.

34. An overseas LLP cannot be registered as a Guernsey LLP unless -

- (a) the LLP is able under the law of the district, territory or place in which it is incorporated to be registered as a Guernsey LLP, and
- (b) the LLP has complied with the requirements of that law in relation to its registration as a Guernsey LLP.

LLP cannot be in liquidation, etc.

35. An overseas LLP cannot be registered as a Guernsey LLP if-

- (a) the LLP is being wound up, is in liquidation or has been declared insolvent,

- (b) a receiver or administrator has been appointed, whether by a court or not, in relation to any property of the LLP,
- (c) the LLP has entered into a compromise or arrangement with a creditor, and the compromise or arrangement is in force,
- (d) an application has been made to a court, whether in Guernsey or elsewhere -
 - (i) to put the LLP into liquidation, to wind it up or to have it declared insolvent,
 - (ii) for the approval of a compromise or arrangement between the LLP and a creditor (other than a compromise or arrangement approved by the Commission), or
 - (iii) for the appointment of a receiver or administrator in relation to any property of the LLP,

and (in each case) the application has not been finally disposed of.

LLP must satisfy solvency test.

36. (1) An overseas LLP cannot be registered as a Guernsey LLP unless it would, immediately after registration, satisfy the solvency test.

- (2) For the purposes of this Law an LLP satisfies the solvency test if –
- (a) it is able to pay its debts as they become due,
 - (b) the value of its property is greater than the value of its liabilities, and
 - (c) in the case of a supervised LLP, the LLP satisfies any other requirements as to solvency imposed in relation to it by or under –
 - (i) the Protection of Investors (Bailiwick of Guernsey) Law, 1987⁸,
 - (ii) the Insurance Business (Bailiwick of Guernsey) Law, 2002⁹,

⁸ Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; No's XV and XXXII of 2003; No. XVIII of 2008; the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); and the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2010 (No. XX of 2010). Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinance X and XX of 1998; Ordinance XXXIII of 2003; Ordinance XXXI of 2008; and G.S.I. 2010/83.

⁹ Order in Council No. XXI of 2002; amended by Ordinance No. XXXIII of 2003; Ordinance No. XII of 2008; Ordinance No. LI of 2008; Ordinance No. VIII of 2010; Ordinance No. XXXI of 2010 (the Insurance Business (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010); Order in Council No. XIII of 2010; the Insurance Business

- (iii) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002¹⁰,
- (iv) the Banking Supervision (Bailiwick of Guernsey) Law, 1994¹¹,
- (v) the Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000¹², and
- (vi) any other enactment prescribed in regulations made by the Commission for the purposes of this section.

Supervised LLPs cannot be registered without consent of the Commission.

37. (1) An overseas LLP which -

(Bailiwick of Guernsey) (Amendment) Ordinance, 2011; G.S.I. No. 33 of 2004; G.S.I. No. 4 of 2008; G.S.I. No. 15 of 2010; and G.S.I. No. 83 of 2010.

¹⁰ No. XXII of 2002 amended by Ordinance No. XXXIII of 2003; Ordinance No. XIII of 2008; Ordinance No. IX of 2010; Ordinance No. XXXII of 2010; Order in Council No. XIII of 2010; G.S.I. No. 2 of 2008; and G.S.I. No's. 16 and 83 of 2010.

¹¹ No. XIII of 1994; amended by No's. XVII and XXI of 2002, No. XVI of 2003; No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Ordinance No. XXXIII of 2003; G.S.I. No. 1 of 2008; the Banking Supervision (Bailiwick of Guernsey) Regulations, 2010; and G.S.I. 2010/83.

¹² Order in Council No. I of 2001; amended by No. XIV of 2003; No. XVI of 2007; No. VIII of 2008; No. XXV of 2008; No. XIII of 2010; No. XVIII of 2010; Ordinance No. XXXIII of 2003; G.S.I. No. 3 of 2008; and G.S.I. 2010/83.

- (a) intends to become a supervised LLP in Guernsey, or
- (b) is the equivalent of a supervised LLP in the district, territory or place outside Guernsey from which it is migrating,

cannot be registered as an LLP unless it has the written consent of the Commission, and its registration must be in accordance with the terms and conditions of that consent.

(2) The Commission may, from time to time and in such manner as it thinks fit -

- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and
- (b) impose any new term or condition in relation to any such consent.

Application for consent of Commission.

38. (1) An application for the consent of the Commission for an overseas LLP to be registered in Guernsey shall be made in accordance with this section.

(2) The application shall be in such form as the Commission may require and shall include or be accompanied by -

- (a) the migration details, as defined in section 42,

(b) such other information and documents, verified in such manner as the Commission may require, and

(c) such fee as may be prescribed by the Commission.

(3) Sections 52 (Determination of applications to Commission) and 53 (Appeals from determinations of Commission) apply to applications under this section and under section 47.

Application for registration as a Guernsey LLP.

39. (1) An application by an overseas LLP for registration as a Guernsey LLP shall be made to the Registrar.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by -

(a) the migration details,

(b) such other information and documents, verified in such manner, as the Registrar may require,

(c) such fee as the Department may prescribe, and

(d) a declaration of compliance (migration), as defined in section 54.

(3) The application may propose the date on which registration as a Guernsey LLP shall take effect, provided that that date is not later than 3 months after the date of the application.

(4) An application for registration as a Guernsey LLP may only be made by a corporate services provider.

Effect of registration.

40. (1) Upon receipt of the application for registration as a Guernsey LLP -

- (a) the Registrar shall register the migration details,
- (b) the Registrar shall issue a certificate of registration in respect of the LLP which shall be conclusive evidence that the LLP is duly registered, and
- (c) subject to the provisions of this Part, the LLP shall be treated in all respects as an LLP incorporated under this Law.

(2) If the application proposed a date on which registration as a Guernsey LLP was to have effect and that date is later than the date on which the Registrar issues the certificate of registration, then the LLP shall be registered as a Guernsey LLP on (and the date stated on the certificate shall be) the proposed date.

Cancellation of registration.

41. (1) Where an overseas LLP is registered as a Guernsey LLP under this Part, the LLP shall, as soon as possible, file with the Registrar –

- (a) a certificate or other document issued under the law of the district, territory or place in which the LLP has ceased to be incorporated and registered evidencing the fact that the LLP has ceased to be incorporated and registered under the law thereof; or, in the absence of such a certificate or document,
- (b) such other evidence of that fact as the Registrar is prepared to accept for the purposes of this section.

(2) If the Court is satisfied that -

- (a) an overseas LLP has been registered as a Guernsey LLP pursuant to the provisions of this Part, and
- (b) the LLP continues to be incorporated or registered under the law of any district, territory or place outside Guernsey,

the Court may on the application of -

- (i) the LLP or any of its members or creditors,
- (ii) the Registrar, or

(iii) in the case of a supervised LLP, the Commission,

make such order as it thinks fit for the removal of the LLP's name from the Register.

(3) An order under subsection (2) may be made subject to such terms and conditions and subject to such penalty as the Court thinks fit.

(4) On the making of an order under subsection (2) the LLP's registration in Guernsey shall (unless the Court orders otherwise) be void from the outset.

Migration details.

42. (1) In this Law "**migration details**" means -

- (a) a copy of the LLP's certificate of incorporation or registration in the district, territory or place in which it is incorporated or registered,
- (b) a statement of the LLP's current members,
- (c) a statement of the LLP's members as proposed immediately after registration as a Guernsey LLP,
- (d) a statement of the address of the LLP's registered office -

(i) in the district, territory or place in which it is incorporated or registered, and

(ii) as proposed, in Guernsey, and

(e) evidence satisfactory to the Registrar that, on the date of registration, the LLP will cease to be incorporated and registered under the law of any district, territory or place outside Guernsey.

(2) The statement of the LLP's current members, and the statement of the LLP's members as proposed immediately after registration as a Guernsey LLP, shall comprise their names and any other particulars that the Registrar may prescribe in regulations.

(3) For the avoidance of doubt, the members' agreement which is to be binding on the LLP immediately after its registration in Guernsey may be different from its current members' agreement if the amendments have been consented to by election of the members of the LLP in accordance with the law of the place outside Guernsey.

Transfer of registration of Guernsey LLP to overseas

LLPs may transfer registration.

43. (1) A corporate services provider acting on behalf of an LLP may apply to the Registrar for that LLP to be removed from the Register in accordance with the provisions of this Part.

(2) In this Part "**removed from the Register**" means removed from the

Register for the purposes of becoming registered as an LLP under the law of a district, territory or place outside Guernsey.

LLPs cannot transfer registration if in liquidation, etc.

44. (1) An LLP cannot be removed from the Register if -

- (a) the LLP's affairs have been declared to be in a state of *désastre* at a meeting of arresting creditors held before a Commissioner,
- (b) an interim vesting order has been made against the LLP in respect of any of its real property in the Bailiwick,
- (c) possession or control has been taken of any of the LLP's property or affairs by or on behalf of creditors, or
- (d) an application has been made to the Court under section 88(1) for the LLP's winding up.

(2) An LLP cannot be removed from the Register unless Her Majesty's Procureur and the Director of Income Tax have confirmed that they have no objection to its removal.

LLPs cannot transfer registration unless they satisfy solvency test and give notice to creditors.

45. (1) An LLP cannot be removed from the Register unless it would immediately before removal satisfy the solvency test.

(2) An LLP cannot be removed from the Register unless, before an application is made to the Registrar under section 43(1) for removal, it gives written notice to all its creditors stating that it intends to so apply.

Supervised LLPs cannot transfer registration without consent of Commission.

46. (1) A supervised LLP cannot be removed from the Register unless it has the written consent of the Commission, and its removal must be in accordance with the terms and conditions of that consent.

(2) The Commission may, from time to time and in such manner as it thinks fit -

(a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and

(b) impose any new term or condition in relation to any such consent.

Application for consent of Commission.

47. (1) An application for the consent of the Commission for a supervised LLP to be removed from the Register shall be in accordance with this section.

(2) The application shall be in such form as the Commission may require and shall include or be accompanied by -

(a) evidence acceptable to the Commission that the removal of the LLP from the Register is not prohibited by sections 44 or 45,

- (b) evidence acceptable to the Commission that the LLP is able to become registered under the law of the district, territory or place in question,
- (c) such other information and documents, verified in such manner, as the Commission may require (whether in relation to any particular application or otherwise), and
- (d) such fee as may be prescribed by the Commission.

Application for transfer of registration.

48. (1) An application for removal from the Register shall be made to the Registrar.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by -

- (a) in the case of a supervised LLP, the consent required under section 46,
- (b) confirmation from Her Majesty's Procureur and the Director of Income Tax that they have no objection to the removal of the LLP from the Register,
- (c) evidence acceptable to the Registrar that the removal of the

LLP from the Register is not prohibited by sections 44 or 45,

- (d) evidence acceptable to the Registrar that on the date of the removal of the LLP's name from the Register the LLP will be registered or incorporated under the law of the district, territory or place in question,
- (e) such other information and documents, verified in such manner, as the Registrar may require,
- (f) such fee as the Department may prescribe, and
- (g) a declaration of compliance (migration).

(3) Upon receipt of the documents specified in subsection (2), the Registrar shall give notice of the proposed transfer in such manner and for such period as he thinks fit.

(4) An application for removal from the Register may only be made by a corporate services provider.

Effect of transfer.

49. Not less than 28 days after the day on which the Registrar gave notice under section 48(3) -

- (a) the Registrar shall remove the LLP's name from the Register,

- (b) the LLP shall cease to be an LLP within the meaning of this Law,
- (c) the Registrar shall file in the Register a notice stating that the LLP's name has, pursuant to the provisions of this section, been removed from the Register for the purpose of the LLP becoming incorporated or registered under the law of the district, territory or place specified in the notice, and
- (d) the Registrar shall publish the fact that the LLP has been removed from the Register in such manner and for such period as he thinks fit.

Cancellation of transfer.

50. (1) Where an LLP is removed from the Register under this Part, the LLP shall, as soon as possible, file with the Registrar any certificate or other document issued under the law of the district, territory or place in which the LLP has become incorporated or registered evidencing the fact that the LLP has become incorporated under the law thereof.

- (2) If the Court is satisfied that -
 - (a) an LLP's name has been removed from the Register pursuant to the provisions of this Part, and
 - (b) the LLP has not become incorporated under the law of any district, territory or place outside Guernsey,

the Court may, on the application of -

- (i) the LLP or any of its members or creditors,
- (ii) the Commission, or
- (iii) the Registrar,

make such order as it thinks fit for the restoration of the LLP's name to the Register.

(3) An order under subsection (2) may be made subject to such terms and conditions and subject to such penalty as the Court thinks fit.

(4) On the making of an order under subsection (2) the removal of the LLP's name from the Register shall (unless the Court otherwise orders) be void from the outset.

Power of Court to make orders as to transfer of registration.

51. (1) Subject to subsection (3), if the Court is satisfied that the removal of an LLP from the Register under this Part would unfairly prejudice a member or creditor of the LLP or any other person to whom the LLP is under any obligation or liability, the Court may, on the application of that person made at any time before the date on which the removal of the LLP takes place, or within three months after that date, make such order as it thinks fit in relation to the removal, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that the removal of the LLP shall not take place, or shall only take place subject to such terms and conditions as the Court thinks fit,
- (b) modifying the proposal for the removal of the LLP in such manner as may be specified in the order,
- (c) directing the LLP or its members to reconsider the proposal for the removal of the LLP or any part of the proposal.

(2) An order under subsection (1) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

(3) A member of an LLP the members' agreement of which includes a provision of the type mentioned in section 4(4) may not make an application under this section.

Determination of applications to Commission, and appeals

Determination of applications to Commission.

52. (1) In deciding whether to grant any application made under section 38 or section 47 and, if so, subject to what, if any, terms or conditions, the Commission must have regard to the protection of the public interest, including the need to -

- (a) protect the public, in Guernsey and elsewhere, against the

effects of dishonesty, incompetence or malpractice,

- (b) counter financial crime and the financing of terrorism in Guernsey and elsewhere,
- (c) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the LLP, and also more generally.

(2) If the Commission -

- (a) refuses an application for consent,
- (b) imposes terms or conditions upon that consent, or
- (c) imposes new terms and conditions or varies or revokes terms and conditions in relation to that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 53 to appeal.

(3) Nothing in subsection (2) requires the Commission to disclose

information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform the applicant by written notice and, in the event of an appeal under section 53, subsection (2) of that section shall apply.

Appeals from determinations of Commission.

53. (1) An applicant may appeal to the Court against -

- (a) the refusal of an application for consent,
- (b) the imposition of terms or conditions upon that consent,
- (c) the imposition of new terms and conditions or the variation or revocation of terms and conditions in relation to that consent,
or

(d) the withholding of information pursuant to section 52(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 52(3).

(2) On an appeal under subsection (1)(d), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 52(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.

(3) The grounds of an appeal under this section are that -

(a) the decision was ultra vires or there was some other error of law,

(b) the decision was unreasonable,

(c) the decision was made in bad faith,

(d) there was a lack of proportionality, or

- (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007¹³.

- (5) On an appeal under this section the Court may -
 - (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.

¹³ Order of the Court No. IV of 2007.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

General

Declaration of compliance (migration).

54. (1) A declaration of compliance (migration) is a declaration, signed by a corporate services provider, that all the requirements of this Law in respect of registration as a Guernsey LLP, or the removal of an LLP from the Register (as the case may be), have been fulfilled.

(2) The Registrar, when performing his functions under this Part, may rely upon a declaration of compliance (migration) in all respects and accordingly is not bound to enquire further as to whether, in relation to an application for registration as a Guernsey LLP, or an application for the removal of an LLP from the Register (as the case may be), the provisions of this Part have been complied with.

(3) A person who without reasonable excuse makes a declaration of compliance under this Part which is false, deceptive or misleading in a material particular is

guilty of an offence.

Documents in a language other than English.

55. (1) Where a document provided to the Registrar or Commission under this Part is not in the English language, a translation of it into the English language must also be provided.

(2) The Registrar or the Commission (as the case may be) may require the translation referred to in subsection (1) to be accompanied by a statement signed by the translator that the translator is competent both in the language of the document and in English, and confirming that the translation is an accurate translation of the document.

Registration or transfer not to prejudice continuity of LLP's existence.

56. (1) Registration as a Guernsey LLP or removal from the Register does not create a new legal person, or prejudice or affect the identity or continuity of the legal person constituted by the LLP.

- (2) Upon registration as a Guernsey LLP or removal from the Register -
- (a) all property and rights to which the LLP was entitled immediately before that registration or removal remain its property and rights,
 - (b) the LLP remains subject to all criminal and civil liabilities, and all contracts and debts to which it was subject immediately before that registration or removal,

- (c) all actions and other legal proceedings which immediately before that registration or removal could have been instituted or continued by or against the LLP may be instituted or continued by or against it after that registration or removal, and
- (d) a conviction, ruling, order or judgment in favour of or against the LLP before that registration or removal may be enforced by or against it after that registration or removal.

Terminology used in other jurisdictions.

57. References in this Part to LLPs, certificates of incorporation or registration, liquidations, members or any other matter concerning an LLP include references to their equivalents, in the view of the Registrar and, in the case of a supervised LLP, the Commission, in the law of the territory, district or place outside Guernsey from which or to which an LLP is migrating.

Power to make Ordinances in respect of amalgamations of LLPs.

58. The States may by Ordinance make such provision as they think fit in respect of the amalgamation of LLPs.

PART V

DISQUALIFICATION ORDERS

Disqualification orders.

59. (1) A disqualification order is an order made by the Court prohibiting a person from being a member of any LLP or any specified LLP.

(2) The Court can make a disqualification order of its own motion or upon an application made by -

- (a) the Department,
- (b) the Commission,
- (c) Her Majesty's Procureur,
- (d) the Registrar,
- (e) an LLP of which the person in question is or has been a member,
- (f) a liquidator or creditor of such an LLP as is mentioned in paragraph (e), or
- (g) any other interested party, with the leave of the Court.

(3) The order may be made during proceedings initiated for that purpose or in the course of any other proceedings.

(4) A disqualification order may be granted by consent.

(5) A disqualification order may contain such incidental and ancillary terms and conditions as the Court thinks fit.

(6) The Court shall direct that a copy of the order be served upon the Registrar.

(7) For the purposes of this Part, the Court means the Royal Court constituted by the Bailiff sitting unaccompanied by the Jurats.

Ground for making a disqualification order.

60. (1) The Court may make a disqualification order where it considers that, by reason of a person's conduct in relation to an LLP or otherwise, that person is unfit to be a member of an LLP.

(2) In determining whether a person is unfit, regard shall be had to -

(a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a member of an LLP,

(b) the diligence with which he has fulfilled his responsibilities,

(c) whether the interests of members or creditors or potential members or creditors of any LLP or any specified LLP are or are likely to be in any way threatened by his being a member of an LLP,

- (d) his educational and professional qualifications, his membership of any professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority,
- (f) his knowledge and understanding of the legal and professional obligations of members of LLPs, and
- (g) such other matters as the Court thinks fit.

(3) Without prejudice to the generality of the foregoing, the Court may also have regard to -

- (a) the previous conduct and activities in business or financial matters of the person in question,
- (b) any convictions he has for an offence in connection with the promotion, formation, management, liquidation or striking off of an LLP or a company,
- (c) any convictions he has for any offence and in particular any offence involving fraud or dishonesty,

- (d) whether he has been held liable to make contributions to a company's property under section 433, 434 or 435 of the Companies Law, and
- (e) any misfeasance or breach of any fiduciary or other duty by him in relation to an LLP or company.

Duration of disqualification order.

61. (1) A disqualification order shall have effect for such period not exceeding 15 years as shall be specified therein.

(2) Where a disqualification order is made against a person already subject to such an order, the periods specified in those orders shall run concurrently unless the Court orders them to run consecutively.

Revocation of disqualification orders.

62. (1) A person subject to a disqualification order may apply to the Court for a revocation of the order on the ground that he is no longer unfit to be a member of an LLP.

(2) The Court may only grant an application under subsection (1) if it is satisfied that it would not be contrary to the public interest to do so.

(3) An application under this section for the revocation of a disqualification order shall not be heard unless the person upon whose application the disqualification order was made has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may -

- (a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and
- (b) for that purpose adjourn the hearing of the application.

(4) The revocation of a disqualification order may, with the consent of the parties, be granted by consent.

Consequences of breaking a disqualification order.

63. (1) A person who contravenes any provision of a disqualification order -

- (a) is guilty of an offence, and
- (b) is personally liable for any debts and liabilities of the LLP in relation to which the contravention was committed which were incurred at any time when he was acting in contravention of the disqualification order.

(2) A person's liability pursuant to subsection (1)(b) is joint and several with that of the LLP and of any other person so liable in relation to that LLP.

PART VI

STRIKING OFF

Striking defunct LLP off the Register.

64. (1) This section applies where -

- (a) the Registrar has reasonable cause to believe that an LLP is not carrying on business or is not in operation, or

(b) the Registrar has reasonable cause to believe, in the case of an LLP which is being wound up -

(i) that no liquidator is acting, or

(ii) that the affairs of the LLP are fully wound up.

(2) Where this section applies in relation to an LLP, the Registrar may give notice stating -

(a) the paragraph of subsection (1) by virtue of which this section applies, and

(b) that, at the expiration of a period of 2 months beginning with the date of the notice, the LLP will be struck off the Register and the LLP will be dissolved, unless cause is previously shown to the contrary.

(3) A notice given under subsection (2) shall be published in such manner and for such period as the Registrar thinks fit.

(4) A notice given under subsection (2) shall be sent, by recorded delivery service or in such other manner as may be determined by the Registrar -

- (a) when this section applies by virtue of subsection (1)(b)(ii), to the liquidator at his last known place of business,
- (b) in any other case, to the LLP at its registered office,

and the Registrar may, if he thinks fit, send it to any officer, servant or member of the LLP.

(5) At the expiration of the period mentioned in subsection (2)(b) the Registrar shall, unless cause to the contrary has been shown, strike the LLP off the Register and, upon such striking off, the LLP shall be dissolved.

(6) The Registrar shall publish notice of the striking off in such manner and for such period as he thinks fit.

Striking defaulting LLP off the Register.

65. (1) This section applies where -

- (a) an LLP fails to deliver to the Registrar an annual validation in accordance with the requirements of section 23 before the 31st January in any year,
- (b) a resident agent has requested information under section 7 and, on receipt of such request, the LLP has refused to provide the resident agent which the information requested, or
- (c) the Registrar has the opinion set out in section 101 in respect of

an LLP.

(2) Where this section applies in relation to an LLP, the Registrar may give notice stating -

(a) the paragraph of subsection (1) by virtue of which this section applies, and

(b) that, at the expiration of a period of 2 months beginning with the date of the notice, the LLP will be struck off the Register and the LLP will be dissolved, unless cause is previously shown to the contrary.

(3) A notice given under subsection (2) shall be published in such manner and for such period as the Registrar thinks fit.

(4) A notice given under subsection (2) shall be sent, by recorded delivery service or in such other manner as may be determined by the Registrar, to the LLP at its registered office and the Registrar may, if he thinks fit, send it to any officer, servant or member of the LLP.

(5) At the expiration of the period mentioned in subsection (2)(b) the Registrar shall, unless cause to the contrary has been shown, strike the LLP off the Register and, upon such striking off, the LLP shall be dissolved.

(6) The Registrar shall publish notice of the striking off in such manner and for such period as he thinks fit, and such notice may include the names of the members of

the LLP struck off.

(7) Where this section applies in relation to an LLP by virtue of subsection (1)(a), the LLP shall not be considered to have shown cause to the contrary within the meaning of this section unless it -

- (a) delivers its annual validation to the Registrar, and
- (b) pays to him the appropriate penalty for each calendar month or part of a calendar month between the date by which it should have delivered its annual validation and the date when it in fact did so.

(8) Where this section applies in relation to an LLP by virtue of subsection (1)(b), the LLP shall not be considered to have shown cause to the contrary within the meaning of this section unless it shows, to the satisfaction of the Registrar, that the requested information has been provided to the resident agent.

(9) In subsection (7) "**appropriate penalty**" means such penalty as may be prescribed by the Registrar.

Provisions applying to all strikings off

LLPs party to proceedings.

66. If it is shown to the Registrar that an LLP is party to proceedings, this is cause to the contrary within the meaning of section 64(5) and 65(5), and accordingly he shall not strike the LLP off.

No prejudice to liabilities or powers to wind up.

67. Notwithstanding the striking off of an LLP pursuant to the provisions of this Part -

- (a) the liability, if any, of every officer and member of the LLP continues and may be enforced accordingly, and
- (b) the power of the Court to wind up the LLP is not affected.

Property of struck off LLP.

68. Where an LLP is dissolved under the provisions of this Part all property and rights then vested in it or held on trust for it (but not property held by it on trust for another person) shall, unless Her Majesty's Receiver-General directs otherwise, become *bona vacantia* belonging to the Crown.

Restoration to the Register

Application for restoration to Register.

69. (1) The following persons -

- (a) an LLP which has been struck off under this Part,
- (b) any member or creditor thereof,
- (c) any liquidator thereof,

- (d) the Commission in respect of a supervised LLP, or
- (e) any other person appearing to the Court to have a sufficient interest in making the application,

may apply to the Court for an order restoring the LLP to the Register.

(2) An application under this section must be made before the expiry of 10 years beginning on the date on which the LLP was struck off.

(3) An application cannot be made under this section if the LLP was struck off for the reason set out in section 101.

(4) Notice of an application under this section shall be served on -

- (a) the Registrar,
- (b) the Commission in respect of a supervised LLP,
- (c) Her Majesty's Procureur,
- (d) Her Majesty's Receiver-General, and

(e) any liquidator of the LLP (except where he is the applicant).

(5) The Registrar shall publish notice of the application in such manner and for such period as he thinks fit.

Restoration to the Register.

70. (1) Before making an order for the restoration of an LLP, the Court shall give an opportunity to make representations to -

(a) the Registrar,

(b) the Commission in respect of a supervised LLP,

(c) Her Majesty's Procurer and Her Majesty's Receiver-General,
and

(d) such other persons, if any, as the Court thinks fit, including
(without limitation) -

(i) any member or creditor of the LLP, and

(ii) any liquidator of the LLP.

(2) The Court may, if satisfied -

- (a) that the LLP was, at the time of its striking off, carrying on business or in operation, or
- (b) otherwise that it would be just and equitable for the LLP to be restored to the Register,

order the LLP to be restored to the Register.

(3) In deciding whether or not to restore an LLP to the Register, and without prejudice to any other matter it may have regard to, the Court shall have regard to -

- (a) whether or not the LLP would satisfy the solvency test if it is restored, unless the application for restoration is made by a creditor,
- (b) whether the persons who were members at the time the LLP was struck off consent to being members if the LLP is restored,
- (c) the circumstances in which the LLP was struck off,
- (d) whether there were persistent or gross violations of this Law in respect of the LLP,
- (e) whether the LLP was used for fraudulent purposes,
- (f) whether restoration to the Register would jeopardise the reputation of the Bailiwick as a financial centre, and
- (g) whether it would be otherwise just and equitable to restore the LLP to the Register.

(4) The restoration of an LLP's name pursuant to an order under this section is, unless the Court otherwise directs, and without prejudice to any other term of the order, conditional upon the payment by the applicant to the Registrar of -

- (a) all sums which would have been payable by the LLP if it had not been dissolved and had each year delivered its annual validation in accordance with section 23, and
- (b) such additional amount as may be prescribed by the Registrar.

(5) The restoration of an LLP's name pursuant to an order under this section is, unless the Court otherwise directs, and without prejudice to any other term of the order, conditional upon the payment by the applicant to Her Majesty's Procureur of -

- (a) any costs incurred by Her Majesty's Receiver-General in administering any property belonging to the LLP, and
- (b) any costs incurred by Her Majesty's Procureur in connection with the striking off or the application for restoration.

(6) Upon the restoration of the LLP's name in accordance with an order under this section, the LLP shall be deemed to have continued in existence.

(7) An order under this section may contain such directions and make such provision as the Court thinks fit for placing the LLP and all other persons in the same position as nearly as may be as if the LLP had not been dissolved.

(8) An order under this section may contain such directions and make such provisions as to costs as the Court thinks fit, including directions -

- (a) requiring any person responsible for the LLP being struck off to pay the costs of the application for restoration, and
- (b) requiring any person responsible for the LLP being struck off to reimburse the applicant for any payments made under subsection (4) or (5),

notwithstanding that that person is not a party to the application for restoration.

(9) The Registrar may, subject to such terms and conditions as he thinks fit, restore a struck-off LLP to the Register (whether of his own motion or at the request of the LLP or any member or creditor thereof) if he is satisfied that -

- (a) the LLP was struck off in error, or in circumstances in which, under the provisions of this Part, it should not have been struck off, and
- (b) the restoration of the LLP to the Register under this subsection would not prejudice any creditor or third party.

(10) The Registrar may, subject to the conditions set out at subsection (11) and such further terms and conditions (if any) as he thinks fit, restore to the Register, at the

request of the LLP or any member of creditor thereof, an LLP that was struck off in the circumstances set out in section 65(1)(a), on its delivering its annual validation to the Registrar.

(11) The conditions are that -

- (a) the LLP pays to the Registrar the sums specified in subsection (4), and
- (b) the Registrar is satisfied that the restoration of the LLP to the Register would not prejudice any creditor or third party.

(12) Where the Registrar restores an LLP to the Register under subsections (9) and (10), and except to the extent that the Registrar directs otherwise, the provisions of this Law apply in respect of the LLP as if it had been restored to the Register pursuant to an order of the Court under this section.

(13) Subsection (12) is without prejudice to the other provisions of this section, the provisions of section 69 (Application for restoration to Register), and section 502 of the Companies Law (Rectification of the Register of Companies) as it has effect by virtue of section 6 and Schedule 1.

Property of restored LLP.

71. (1) If an LLP's name is restored to the Register of LLPs before the expiration of 6 years beginning on the date of its dissolution, the LLP is entitled, subject to any order of the Court, to have returned to it -

- (a) any property which vested in the Crown upon dissolution, or
- (b) if any such property has been disposed of, its value at the time of disposal.

(2) The Court may extend the period of 6 years set out in subsection (1) if it regards it as just and equitable to do so having regard to the degree of prejudice the LLP would otherwise suffer.

Meaning of creditor.

72. In this Part "**creditor**" includes a contingent or prospective creditor.

PART VII

ADMINISTRATION

Administration orders.

73. (1) Subject to the provisions of this section, if the Court –

- (a) is satisfied that an LLP does not satisfy or is likely to become unable to satisfy the solvency test, and
- (b) considers that the making of an order under this section may achieve one or more of the purposes set out in subsection (3),

the Court may make an order under this section (an "**administration order**") in relation to

that LLP.

(2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the LLP shall be managed by a person (the "**administrator**") appointed for the purpose by the Court.

(3) The purposes for the achievement of which an administration order may be made are -

(a) the survival of the LLP, and the whole or any part of its undertaking, as a going concern, or

(b) a more advantageous realisation of the LLP's property than would be effected on a winding up,

and the order shall specify the purpose for which it is made.

(4) An administration order may be made notwithstanding the occurrence of any of the events mentioned in section 88; and, if an administration order is so made, then

-

(a) the order for the LLP's winding up shall be discharged or suspended, or

(b) the winding up shall cease to have effect or shall be suspended (as the case may be),

on such terms and conditions as the Court thinks fit.

(5) Where an administration order is made, the administrator shall, within 7 days after the day of his appointment, send a copy of the order to the Registrar.

Application for administration order.

74. (1) An application for an administration order may be made by -

- (a) the LLP,
- (b) any member of the LLP,
- (c) any creditor of the LLP, including any contingent or prospective creditor,
- (d) the Commission, in respect of supervised LLPs,
- (e) in the case of an LLP in respect of which the Court has made an order for winding up or in respect of which a liquidator has been appointed, the liquidator,

or by all or any of those parties, together or separately.

(2) The Court, on hearing an application for an administration order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally,
or
- (c) make an interim order or any other order it thinks fit.

(3) An interim order under subsection (2) may, without limitation, restrict the performance of any functions of the members or of the LLP, whether by reference to the consent of the Court or otherwise.

(4) Notice of an application to the Court for an administration order in respect of an LLP shall, unless the Court orders otherwise, be served on -

- (a) the LLP,
- (b) the Commission, in respect of supervised LLPs, and
- (c) such other persons, if any, as the Court may direct, including (without limitation) any creditor,

who shall each be given an opportunity of making representations to the Court before the

order is made.

(5) Notice of an application for an administration order shall be delivered to the Registrar at least 2 clear days before the day of the making of the application or, if that is not reasonably practicable, then as soon as reasonably practicable thereafter.

(6) The Registrar shall give notice of the application for an administration order in such manner and for such period as he thinks fit.

Effect of application for administration order.

75. (1) During the period between the presentation of an application for an administration order and ending with the making of such an order or the dismissal of the application -

- (a) no order made for the LLP's winding up,
- (b) the occurrence of an event specified in section 88(1)(a) or (b) shall be of no effect,
- (c) no proceedings may be commenced or continued against the LLP except with the leave of the Court and subject to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993)¹⁴ and rights of enforcement thereof, are unaffected by the provisions

¹⁴ Order in Council No. III of 1993.

of this paragraph).

(2) Nothing in subsection (1) requires the leave of the Court for the presentation of an application for the LLP's winding up.

Effect of administration order.

76. (1) On the making of an administration order any application for the LLP's winding up shall be dismissed.

(2) During the period for which an administration order is in force –

- (a) no order made for the LLP's winding up,
- (b) the occurrence of an event specified in section 88(1)(a) or (b) shall be of no effect,
- (c) no proceedings may be commenced or continued against the LLP except with the consent of the administrator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993) and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

Details of administration to appear in LLP's correspondence.

77. (1) All correspondence of an LLP subject to an administration order shall contain the administrator's name and a statement that the affairs, business and property of the LLP are being managed by the administrator, unless this is readily ascertainable -

(a) from the context of the correspondence, or

(b) from a course of dealing between the LLP and the person to whom the correspondence is addressed.

(2) Where an LLP subject to an administration order has a website, the administrator's name and a statement that the affairs, business and property of the LLP are being managed by the administrator shall appear on a reasonably prominent location on that website.

(3) An LLP which fails to comply with this section is guilty of an offence.

General powers of administrator.

78. (1) The administrator may do all such things as may be necessary or expedient for the management of the affairs, business and property of the LLP.

(2) Without prejudice to subsection (1), and unless the Court orders otherwise, the administrator has the same powers in relation to LLPs as an administrator appointed under the Companies Law has in relation to companies as specified in Schedule 1 to that Law.

(3) The administrator may apply to the Court for directions in relation to -

- (a) the extent or performance of any function, and
- (b) any matter arising in the course of his administration,

and on such an application the Court may make such order, on such terms and conditions, as it thinks fit.

(4) In performing his functions the administrator is deemed to act as the LLP's agent, but shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent or acts in bad faith.

(5) A person dealing with the administrator in good faith is not concerned to enquire whether the administrator is acting within his powers.

(6) The administrator has power –

- (a) to remove any member of the LLP and to appoint any person to be a member of it, whether to fill a vacancy or otherwise, and
- (b) to call any meeting of members or creditors of the LLP.

General duties of administrator.

79. (1) The administrator shall, on his appointment, take into his custody or under his control all the property to which the LLP is or appears to be entitled.

(2) The administrator shall manage the affairs, business and property of the LLP in accordance with any directions given by the Court.

Co-operation with and by administrator.

80. Any function conferred on the LLP, whether by this Law or otherwise, which could be performed in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

Discharge or variation of administration order.

81. (1) The administrator may at any time apply to the Court for the administration order to be discharged or varied.

(2) The administrator shall apply to the Court for the administration order to be discharged or varied if it appears to him that -

- (a) the purpose or each of the purposes specified in the order has been achieved or is incapable of achievement, or
- (b) it would otherwise be desirable or expedient to discharge or vary the order.

(3) The Court, on hearing an application under this section for the discharge or variation of an administration order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,

(b) adjourn the hearing, conditionally or unconditionally, or

(c) make an interim order or any other order it thinks fit.

(4) Where an administration order is discharged or varied under this section the administrator shall -

(a) within 7 days after the day of the order, send a copy of the order effecting the discharge or variation to the Registrar, and

(b) within such time as the Court may direct, send a copy thereof to such other persons as the Court may direct.

Remuneration and swearing in of administrator.

82. (1) The administrator's remuneration, and any costs, charges and expenses properly incurred in the administration, are payable from the LLP's property in priority to all other claims.

(2) The administrator's fees shall be fixed by the Court.

(3) An administrator shall be sworn before the Court when the Court makes the administration order or at any other time directed by the Court.

Vacation of office.

83. (1) The administrator -

- (a) may at any time be removed from office by order of the Court,
- (b) may resign his office by giving notice of resignation to the Court, and
- (c) shall vacate office if the administration order is discharged.

(2) Where there is a vacancy in the office of administrator the Court may, on the application of any interested party, appoint a replacement.

Release of administrator.

84. (1) A person who has ceased to be the administrator of an LLP has his release with effect from -

- (a) in the case of a person who has died, the time at which notice is given to the Court that he has ceased to hold office,
- (b) in any other case, such time as the Court may determine.

(2) Where a person has his release under this section he is, with effect from the time of release, discharged from all liability both in respect of his acts and omissions in the administration and otherwise in relation to his conduct as administrator, except to the extent that he has incurred personal liability by virtue of section 78(4).

(3) However, nothing in this section prevents the exercise, in relation to a person who has his release under this section, of the Court's powers under section 78(4).

Information to be given by administrator.

85. (1) Where an administration order is made, the administrator shall -

- (a) forthwith send to the LLP notice of the order,
- (b) forthwith send a copy of the order to the Registrar,
- (c) within 28 days after the day of the making of the order-
 - (i) unless the Court orders otherwise, send notice of the order to all creditors of the LLP, so far as he is aware of their addresses, and
 - (ii) in the case of a supervised LLP, send notice of the order to the Commission, and
- (d) within such time as the Court may direct, send a copy of the order to such other persons as the Court may direct.

(2) The Registrar shall give notice of the administration order in such manner and for such period as he thinks fit.

Statement of affairs to be submitted to administrator.

86. (1) Where an administration order is made, the administrator may require all or any of the persons mentioned in subsection (3) to make out and submit to him a statement (a "**statement of affairs**") in such form as he may require as to the affairs of the LLP.

(2) The statement of affairs shall be verified by affidavit of the persons required to submit it (or in such other manner as the administrator may require) and shall show -

- (a) particulars of the LLP's property, debts and liabilities,
- (b) the names and addresses of its creditors,
- (c) any securities held by any of its creditors,
- (d) the dates when those securities were respectively given, and
- (e) such further or other information as the administrator may require.

(3) The persons referred to in subsection (1) are -

- (a) those who are or have been members of the LLP,

- (b) those who are in the LLP's employment or have been in its employment at any time within the period of one year before the date of the administration order ("**the preceding year**") the preceding year, and are in the administrator's opinion capable of giving the information required,
- (c) those who are or have within the preceding year been officers or members of, or in the employment of, a company, partnership, limited partnership or other body of the type prescribed by Ordinance under section 1(6) which is, or within the preceding year was, a member of the company.

(4) In subsection (3), "**employment**" includes employment under a contract for services.

(5) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to the next subsection) within a period of 21 days after the day on which written notice of the requirement is given to them by the administrator.

(6) The administrator, if he thinks fit, may -

- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
- (b) either when giving notice under subsection (5) or subsequently,

extend the period mentioned in that subsection,

and where the administrator has refused to exercise a power conferred by this subsection, the Court, if it thinks fit, may exercise it.

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is guilty of an offence and, in addition, liable to a daily default fine.

(8) Nothing in this section compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003¹⁵), but an advocate or other legal adviser may be required to give the name and address of any client.

(9) A requirement imposed by an administrator under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

Protection of interests of creditors and members.

87. (1) At any time when an administration order is in force, a creditor or member of the LLP or, in the case of a supervised LLP, the Commission, may apply to the Court for an order under this section on the ground -

¹⁵ Order in Council No. XXIII of 2003.

- (a) that the LLP's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including, except where the applicant is the Commission, at least the applicant himself),
- (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial, or
- (c) that it would otherwise be desirable or expedient for an order under this section to be made.

(2) The Court, on hearing an application for an order under this section, may, on such terms and conditions as it thinks fit -

- (a) dismiss the application, or make such order as it thinks fit for giving relief in respect of the matters complained of,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order that it thinks fit.

(3) An order under this section may in particular -

- (a) regulate the future management by the administrator of the

LLP's affairs, business and property,

- (b) require the administrator to refrain from doing or continuing an act complained of by the applicant, or to do an act which the applicant has complained he has omitted to do,
- (c) require the summoning of a meeting of members for the purpose of considering such matters as the Court may direct,
- (d) discharge the administration order and make such consequential provision as the Court thinks fit.

(4) Where the administration order is discharged the administrator shall -

- (a) within 7 days after the day of the discharge, send a copy of the order effecting the discharge to the Registrar, and
- (b) within such time as the Court may direct, send a copy thereof to such persons as the Court may direct.

(5) An application for an order under this section may also be made, with leave of the Court, by a person other than one described in subsection (1).

PART VIII

WINDING UP AND DISSOLUTION OF LLPs

Winding up of LLPs.

88. (1) An LLP shall be wound up upon the occurrence of any of the following -

- (a) upon the happening of any event specified in that behalf in the members' agreement;
- (b) upon the written agreement of all members that the LLP shall be wound up or dissolved, or
- (c) upon the making by the Court of an order under section 89(1) for the winding up of the LLP.

(2) Subject to the provisions of the members' agreement, an LLP shall not be wound up by reason of any change in the members.

Winding up of LLP by the Court.

89. (1) The Court may order the winding up of an LLP on the application of any member or creditor thereof or on the application of the Department or Commission if in its opinion -

- (a) it is not reasonably practicable to carry on the LLP's business in conformity with the members' agreement,
- (b) the LLP cannot satisfy the solvency test,

- (c) without prejudice to the generality of paragraph (b), the following conditions are satisfied -
 - (i) the LLP is indebted to a creditor in a sum exceeding £750 or such other sum as may be prescribed,
 - (ii) the creditor has, by Her Majesty's Sergeant, served a signification on the LLP demanding payment of the debt, and
 - (iii) the LLP does not, within a period of 21 days immediately following the date of service of that demand, pay the debt or give security for it to the creditor's satisfaction,
- (d) the LLP is being conducted in a manner which is calculated to affect prejudicially the carrying on of the LLP business,
- (e) the affairs of the LLP are being conducted in such a way as to defraud creditors (whether of the LLP or of any other person) or in an unlawful manner,
- (f) there has been persistent default by the LLP or by any member thereof in complying with the requirements or conditions imposed by or under this Law or any regulation made under it,
- (g) persons connected with the formation or management of the LLP have, in connection therewith, been guilty of fraud, misfeasance,

breach of fiduciary duty or other misconduct in relation to the LLP or any member thereof,

- (h) it is desirable that the LLP should be wound up for the protection of the public or of the reputation of the Bailiwick, or
- (i) it is otherwise just and equitable to do so.

(2) Upon the making of an order under subsection (1) for the winding up of an LLP or at any time thereafter, the Court may, on the application of any member or assignee thereof or any creditor, make such other orders in relation to the winding up as it thinks fit, including one for the appointment of one or more liquidators to wind up the LLP's affairs and distribute its property.

General provisions as to winding up of LLPs.

90. (1) When an LLP is required to be wound up its affairs shall, unless a liquidator has been appointed by the Court under section 89(2), be wound up by the members.

(2) From the commencement of the winding up of an LLP, no member may, except in accordance with section 93, claim as a creditor of the LLP.

(3) The winding up of an LLP shall be deemed to commence upon the earlier of the following -

- (a) the date of the occurrence of an event specified in section

88(1), or

- (b) the date of the order of the Court under section 89(1) for its winding up.

(4) On the appointment of a liquidator all powers of the members cease; and a person who purports to exercise any power of a member at a time when, pursuant to this subsection, those powers have ceased shall be guilty of an offence.

- (5) Upon the commencement of the winding up of an LLP –

- (a) the members, or

- (b) if a liquidator has been appointed, the liquidator

shall publish notice that the LLP is being wound up in La Gazette Officielle or in such other manner or for such period as may be prescribed by the Registrar.

(6) Where there is a contravention of any provision of subsection (5) in relation to an LLP, the members or the liquidator (as the case may be) -

- (a) shall be guilty of an offence, and

- (b) shall each continue to incur liability as if they were the members of an LLP which was not being wound up.

(7) From the commencement of the winding up of an LLP the LLP shall cease to carry on business except to the extent necessary for its beneficial winding up; and where in relation to an LLP there is a contravention of this subsection, the LLP and each member thereof shall be guilty of an offence.

(8) All expenses properly incurred in the winding up of an LLP, including the liquidator's remuneration, are payable from the LLP's property in priority to all other debts.

(9) From the commencement of the winding up of an LLP, the persons winding up the LLP's affairs, in the name of and for and on behalf of the LLP -

(a) may, to the extent necessary for the beneficial winding up of the LLP, prosecute, defend or settle any civil or criminal action,

(b) shall dispose of the LLP's property and realise its property, and

(c) shall, in accordance with the provisions of section 93 -

(i) discharge the LLP's debts, and

(ii) distribute to the members any remaining property of the LLP.

- (10) As soon as an LLP's affairs are fully wound up -
- (a) the persons who conducted the winding up shall -
 - (i) prepare an account of the winding up, giving details of the conduct thereof and the disposal of the LLP's property, and stating whether or not any state of affairs described in section 91(1) or 92(2) has come to their attention,
 - (ii) provide all members with a copy of the account, and
 - (iii) within a period of seven days beginning on the date of the completion of the winding up, file with the Registrar, and publish in La Gazette Officielle or in such other manner as may be prescribed by the Registrar, notice of completion of the winding up,
 - (b) the Registrar shall, as soon as is reasonably practicable after such filing, delete the inscription relating to the LLP from the Register, and
 - (c) the LLP's certificate of registration shall thereupon cease to be valid and the LLP shall thereupon be dissolved.

(11) Where there is a contravention of any provision of subsection 10(a), the persons who conducted the winding up –

(a) shall each be guilty of an offence, and

(b) shall each continue to incur liability as if they were members of an LLP which had not been dissolved.

(12) The persons conducting the winding up of an LLP may seek the Court's directions as to any matter arising in relation to the winding up; and upon such an application the Court may make such order as it thinks fit.

Civil liability for fraudulent trading.

91. (1) If in the course of the winding up of an LLP it appears that any business of the LLP has been carried on with intent to defraud creditors (whether of the LLP or of any other person), or for any fraudulent purpose, subsection (2) has effect.

(2) The Court, on the application of the liquidator, administrator, or any creditor or member of the LLP may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned above shall be liable to make such contributions to the LLP's property as the Court thinks proper.

Civil liability of members for wrongful trading.

92. (1) Subject to subsection (3), if in the course of the winding up of an LLP it appears that subsection (2) applies to a person, the Court, on the application of the liquidator or any creditor or member of the LLP, may declare that that person shall be liable to make such contribution to the LLP's assets as the Court thinks proper.

(2) This subsection applies in relation to a person if -

(a) the LLP has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up of the LLP, that person knew or ought to have concluded that there was no reasonable prospect of the LLP avoiding going into insolvent liquidation, and

(c) that person was a member of the LLP at that time.

(3) The Court shall not make a declaration under this section in respect of any person if it is satisfied that, after the condition specified in subsection (2)(b) was first fulfilled in relation to him, he took every step with a view to minimising the potential loss to the LLP's creditors that (assuming him to have known that there was no reasonable prospect of the LLP avoiding going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a member of an LLP ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, reached or taken by a reasonably diligent person having both -

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that member in relation to the LLP, and

(b) the general knowledge, skill and experience of that member.

(5) The reference in subsection (4) to the functions carried out in relation to a LLP by a member of the LLP includes any function which he does not carry out but which has been entrusted to him.

(6) For the purposes of this section a LLP goes into insolvent liquidation if it goes into liquidation at a time when its property is insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) This section is without prejudice to section 91.

(8) This section and section 91 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

(9) On the hearing of an application under this section and section 91, the applicant may himself give evidence and call witnesses.

Distribution of property upon winding up.

93. (1) Subject to section 90(8), which provides that all expenses properly incurred in the winding up of an LLP are payable from the LLP's property in priority to all other debts, the property shall be distributed in the following order -

(a) firstly, to creditors other than members, in satisfaction of the

LLP's debts, as if the LLP were a company which is insolvent,

- (b) secondly, to members who are creditors, to the extent otherwise permitted by law, in satisfaction of the LLP's debts other than debts described in paragraph (c),
- (c) finally, to other members, according to the provisions of the members' agreement.

(2) In the application of the Preferred Debts (Guernsey) Law, 1983¹⁶ to the winding up of an LLP by virtue of subsection (1)(a), the expression "**the relevant date**" shall mean the date on which the winding up of the LLP is deemed to have commenced under section 90(3).

PART IX

CRIMINAL AND CIVIL PENALTIES

Criminal penalties for offences under this Law.

94. (1) A person guilty of an offence under section 24(3), 54(3), or 96 shall be liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months, to a fine not exceeding level 5 on the uniform scale, or to both,

¹⁶ Ordres en Conseil Vol. XXVIII, p. 184; as amended by No. VII of 1992; No. III of 1993; No. IX of 1998; No. XIV of 2008; the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (No. XXXI of 2005); and the Preferred Debts (Guernsey and Alderney) (Amendment) Ordinance, 2006 (No. XXIII of 2006).

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine, or to both.

(2) A person guilty of any other offence under this Law shall be liable -

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

(b) on conviction on indictment, to a fine.

(3) The imposition by this Law of a criminal penalty in respect of any act or omission is without prejudice to any other remedy or liability (civil or criminal) in respect thereof (except as provided for by section 100).

Criminal and civil liability for false statements.

95. Any person who in connection with the registration of an LLP under this Law, or in submitting any declaration or other document or information to the Commission or Registrar under or for the purposes of any provision of this Law, any regulation made under it, or in compliance or purported compliance with any requirement imposed by or under any such provision, or otherwise for the purposes of any such provision -

(a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

shall be guilty of an offence; and, whether or not criminal proceedings are instituted, a person who suffers loss by reasonable reliance upon any such statement, information or document, or upon any statement, information or document which has, by reason of any supervening change of fact or circumstance, become false, deceptive or misleading in a material particular, may recover damages for the loss -

- (e) from the first mentioned person, or
- (f) from any member -
 - (i) who knew or ought reasonably to have known that the statement, information or document was or had become false, deceptive or misleading in a material particular, and

- (ii) who had time or opportunity to amend or otherwise correct the statement, information or document before it was relied upon.

Offences by bodies corporate, etc.

96. (1) Where an offence under this Law is committed by a body corporate or by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to or to have been facilitated by any neglect on the part of, any director, manager, member of any committee of management or other controlling authority, secretary or other similar officer or partner of the body, or any person purporting to act in any such capacity, he as well as the body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Proceedings for an offence alleged to have been committed under this Law by an unincorporated body shall be brought in the name of that body and not in the name of any of its members; and a fine imposed on the body on its conviction of such an offence shall be paid out of its funds.

(4) For the purposes of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

Civil penalties

Civil penalties.

97. (1) This section applies to LLPs which are liable to a civil penalty.

(2) If the Registrar is satisfied that an LLP is liable to a civil penalty he may make an order directing it to pay the civil penalty.

(3) The Registrar may, if he thinks fit, make regulations concerning civil penalties, including provision for -

(a) the amount of the civil penalty, and

(b) the imposition and amount of additional daily penalties.

(4) Where regulations make provision for the imposition of additional daily penalties, an order of the Registrar under subsection (2) directing an LLP to pay a civil penalty may provide that an additional daily penalty shall accrue after the date of the imposition of the original penalty without further notice.

(5) In default of payment of a civil penalty, the Registrar may proceed to enforce payment as if the amount due were a civil debt.

Daily default.

98. (1) Where a person is liable under the provisions of this Law to a daily default fine in respect of any offence, he is liable, for each day of continued contravention, to a daily default fine not exceeding 10% of the maximum fine.

(2) In this section the "**maximum fine**" means the amount on the uniform scale which a fine cannot exceed on summary conviction of the offence.

Appeal against civil penalties.

99. An LLP aggrieved by an order made by the Registrar under section 97(2) may apply to set it aside or modify it in accordance with section 104 (General right to apply to Court to set aside action of Registrar).

Relationship of civil penalties with prosecutions.

100. (1) An LLP is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after the civil penalty has been paid, the Registrar shall repay the civil penalty to the LLP.

Striking off for persistent or gross contraventions.

101. An LLP in respect of which, in the opinion of the Registrar, there have been persistent or gross contraventions of this Law is liable to be struck off the Register in accordance with Part VI (Striking off).

PART X

MISCELLANEOUS PROVISIONS

Non-applicability of general partnership law.

102. Except as provided for by this Law, the rules of law applicable to partnerships shall not apply to LLPs.

Exclusion of liability for certain public officers.

103. No liability shall be incurred by the States, the Policy Council, the Department or the Commission, or by any member, officer or servant thereof, or by the Registrar or any other officer of the Registrar, in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under this Law, any regulation made under it, unless the thing is done or omitted to be done in bad faith.

General right to apply to Court to set aside action of Registrar.

104. (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or determination of the Registrar (including an order directing payment of a civil penalty) in respect of an LLP can apply to the Court to set aside or modify that action, direction, decision or determination.

(2) An application under subsection (1) shall be made in such manner as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit, and without limitation -

(a) in relation to an application in respect of a civil penalty, the order may increase the amount of the civil penalty for which the LLP is liable,

(b) in relation to an application in respect of a striking off under section 101, the execution of the order may be stayed subject to the payment of any outstanding criminal penalties, fees or civil penalties by the LLP or such other person as it thinks fit.

(4) Subject to any direction given by the Court -

(a) the applicant shall give notice of the application to the Registrar,

(b) where the applicant is not the LLP in respect of which the application is made, the applicant shall give notice of the application to the LLP, and

(c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Registrar.

(5) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961¹⁷ (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Fees recoverable as a civil debt.

105. A fee payable under a regulation made under this Law shall be recoverable from the LLP as a civil debt.

¹⁷

Ordres en Conseil Vol. XVIII, p. 315.

Restrictions on use of certain descriptions and names.

106. (1) No person carrying on any business in the Bailiwick, other than an LLP within the meaning of this Law or a member thereof, shall -

- (a) so describe himself, or so hold himself out, as to indicate or reasonably be understood to indicate (whether in English or any other language), or
- (b) use any name which indicates or may reasonably be understood to indicate (whether in English or any other language),

that he is, or is carrying on business as, an LLP incorporated under this Law or (as the case may be) a member thereof.

(2) A person who contravenes or causes or permits any contravention of any provision of this section shall be guilty of an offence.

Service of documents on LLPs and members.

107. (1) Without prejudice to any other lawful method of service, any document to be given to or served on -

- (a) an LLP, may be given or served -
 - (i) by being left at, or sent by post to, the LLP's registered

office, or

(ii) by being delivered to any member thereof, or by being left at, or sent by post to, his address shown in the Register,

(b) a member, may be given or served -

(i) by being left at, or sent by post to, the LLP's registered office, or

(ii) by being delivered to him, or by being left at, or sent by post to, his address shown in the Register,

and in this section the expression "by post" means by registered post or recorded delivery service.

(2) Notice to a member of any matter relating to the business or affairs of the LLP shall (without prejudice to the provisions of section 115(4)) be deemed to be notice to the LLP.

(3) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this section to have been received -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day

after the day of posting,

- (b) in the case of a document sent elsewhere by airmail, on the seventh day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958¹⁸.

(4) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

Unfair prejudice, derivative claims and liability of members

Petition by LLP member.

108. A member of an LLP may apply to the court by petition for an order on the ground –

- (a) that the LLP's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
- (b) that an actual or proposed act or omission of the LLP (including an act or omission on its behalf) is or would be so prejudicial.

¹⁸ Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

Power of the court under section 108.

109. (1) If the court is satisfied that a petition under section 108 is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may –

- (a) regulate the conduct of the LLP's affairs in the future,
- (b) require the LLP–
 - (i) to refrain from doing or continuing an act complained of, or
 - (ii) to do an act that the petitioner has complained it has omitted to do,
- (c) authorise civil proceedings to be brought in the name and on behalf of the LLP by such person or persons and on such terms as the court may direct,
- (d) require the LLP or the members of the LLP not to make any, or any specified, alterations in the LLP agreement without the leave of the court, and
- (e) provide for the purchase of the rights and interests of any members in the LLP by other members or by the LLP itself.

Derivative claims.

110. (1) A member of an LLP may bring a claim –

- (a) in respect of a cause of action vested in the LLP, and
- (b) seeking relief on behalf of the LLP,

and such a claim is referred to in this Law as a "**derivative claim**".

(2) A derivative claim may only be brought under this section or in pursuance of an order of the court under section 109(1).

(3) A derivative claim under this section may only be brought in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust against a member of an LLP.

Power of members to exclude rights under sections 108 and 110.

111. (1) The members of an LLP may by unanimous agreement exclude the rights contained in section 108 and 110(1), either indefinitely or for such period as is specified in the agreement.

(2) An agreement under subsection (1) must be recorded in writing, and may be contained within the members' agreement of that LLP.

(3) Where the members of an LLP have made an agreement under subsection (1), sections 108 to 110 shall not apply to those members for such period as that agreement is in force.

Relief from liability for members in certain circumstances.

112. (1) If in proceedings for negligence, default, breach of duty or breach of trust against a member of an LLP it appears to the Court that the officer or person is or may be liable but that he acted honestly and, having regard to all the circumstances of the case he ought fairly to be excused, the Court may relieve him, either wholly or in part, from his

liability on such terms and conditions as it thinks fit.

(2) If any such member has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust -

(a) he may apply to the Court for relief, and

(b) the Court has the same power to relieve him as it has under subsection (1).

Subordinate legislation

Power to make regulations.

113. The Department may by regulations make such provision for the implementation of this Law and otherwise in respect of LLPs as it thinks fit including (without prejudice to the generality of the foregoing) provision as to any of the following matters -

(a) the fees payable under sections 9(3), 10(2), 12(2), 28(1), 39(2) and 48(2)(e),

(b) the duties of the Registrar under this Law,

(c) generally, the conduct and regulation of the registration of LLPs under this Law and any matters incidental thereto, including the form of the Register,

- (d) the amendment of any provisions of sections 22 to 26 inclusive so as to exclude the application of any requirement of those provisions in relation to LLPs of such classes or descriptions, in such circumstances and subject to such conditions as may be specified in the regulations,

- (e) the amendment of any provision of -
 - (i) section 9(3) (matters to be filed with Registrar in connection with registration of LLPs),

 - (ii) section 12 (Application to change name)

 - (iii) section 13 (Reservation of names)

 - (iv) section 22 (Records and accounts),

- (f) without prejudice to the generality of paragraphs (b) and (c), the fees to be payable by any person for -
 - (i) an inspection by him of the Register,

 - (ii) a copy or extract, or a certified copy or extract, of an entry in the Register or any certificate.

General provisions as to Ordinances and regulations.

114. (1) Any Ordinance and regulations under this Law may -
- (a) empower the Department or the Commission, in prescribed circumstances, to issue licences or permissions and give directions,
 - (b) provide that the provisions of this Law shall apply in relation to any class or description of LLP specified by the regulations subject to such exceptions, adaptations and modifications as may be so specified,
 - (c) make provision for their enforcement, including provision as to the creation, trial (summarily or on indictment) and punishment of offences,
 - (d) contain incidental, supplemental, transitional and consequential provision,
 - (e) be varied or repealed by subsequent regulations or Ordinances (as appropriate) under this Law, and
 - (f) make consequential amendments to this Law and other enactments so far as they relate to LLPs.

(2) Any power conferred by this Law to make Ordinances or regulations may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions,

(c) so as to prohibit the doing of anything in relation to which provision may be made by Ordinance (or regulations, as the case may be) except under the authority of and in accordance with the conditions of a licence granted, subject to the satisfaction of such criteria and the payment of such fee as may be prescribed, by such person or body as may be prescribed.

(3) Any regulation made under this Law shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of new regulations.

Final provisions

Interpretation.

115. (1) In this Law, unless the context otherwise requires -

"**accounting records**" shall be construed in accordance with section 22(1)(d),

"**bankrupt**" means, in relation to any person -

- (a) that he has been declared by the Court to be insolvent or that a Commissioner or Committee of Creditors has been appointed by the Court to supervise or secure his estate,
- (b) that his affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner,
- (c) that a preliminary vesting order has been made against him in respect of any of his real property in the Bailiwick,

(d) in the case of a registered company, that -

(i) a liquidator (provisional or otherwise) has been appointed to act, or

(ii) the company has passed a special resolution requiring the company to be wound up voluntarily,

otherwise than for the sole purpose of solvent amalgamation or solvent reconstruction, or

(iii) either of the following circumstances applies -

(A) the period (if any) fixed by the memorandum or articles for the duration of the company expires, or

(B) the event (if any) occurs on the occurrence of which the memorandum or articles provide that the company shall be dissolved,

provided that in each case the company passes an ordinary resolution that it be wound up voluntarily;

(e) that a composition or arrangement with creditors has been

entered into in respect of him whereby his creditors will receive less than 100p in the pound or that possession or control has been taken of any of his property or affairs by or on behalf of creditors,

including analogous procedures and declarations in other jurisdictions; and cognate expressions shall be construed accordingly,

"body corporate" means a body incorporated with or without limited liability in any part of the world,

"business" includes every trade, occupation or profession,

"certificate of incorporation" means the certificate issued by the Registrar under section 9(5), 27(3) or 40(1)(b),

"the Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987¹⁹,

"the Companies Law" has the meaning given by section 14(2)(a),

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly,

¹⁹ Ordres en Conseil Vol. XXX, p. 243.

"corporate services provider" means a person who holds a full fiduciary licence within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000²⁰,

"the Court" means the Royal Court sitting as an Ordinary Court,

"declaration of compliance (annual validation)" has the meaning given by section 24,

"declaration of compliance (migration)" has the meaning given by section 54,

"debts" includes obligations and liabilities,

"Department" means the States Commerce and Employment Department,

"Guernsey licensed fiduciary" means a person who is a licensed fiduciary under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000²¹,

²⁰ Order in Council No. I of 2001; amended by No. XIV of 2003; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

²¹ Order in Council No. I of 2001; amended by No. XIV of 2003; No. XVI of 2007; No. VIII of 2008; No. XXV of 2008; and Ordinance No. XXXIII of 2003 and Guernsey Statutory Instrument No. 3 of 2008.

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"incorporation statement" has the meaning given my section 9(3),

"member", in relation to an LLP, means any person who has been admitted as a member of the LLP in accordance with the members' agreement,

"members' agreement" has the meaning given by section 4,

"migration details" has the meaning given by section 42,

"Policy Council" means the States Policy Council,

"property" means any property, whether tangible or intangible, whether vested contingent or future, and whether moveable property or property which would be regarded by the law of Guernsey as "immeubles",

"Register" means the register of LLPs established by virtue of section 6 and Schedule 1,

"Registrar" means the Registrar of LLPs established by virtue of section 6 and Schedule 1,

"registration" means the registration of an LLP by inscription in the Register in accordance with the provisions of this Law, and cognate expressions shall be construed accordingly,

"solvency test" has the meaning given by section 36,

"States" means the States of Guernsey, and

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989²².

- (2) For the purposes of this Law, a **"supervised LLP"** means an LLP which –
- (a) holds or formerly held a licence under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987²³ or an authorisation under section 8 of that Law,
 - (b) is a licensee or former licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002²⁴ or the Insurance Managers and Insurance Intermediaries (Bailiwick of

²² Ordres en Conseil Vol. XXXI, p. 278.

²³ Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; and by Nos. XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

²⁴ Order in Council No. XXI of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

Guernsey) Law, 2002²⁵,

- (c) is a licensed institution or former licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994²⁶,
- (d) is a licensed fiduciary or former licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, or
- (e) is an LLP of any other class or description prescribed by the Commission for the purposes of this subsection.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) Any provision of this Law requiring or authorising any thing to be done by or in relation to the members shall be satisfied, except where the context requires otherwise, by that thing being done by or in relation to any one member.

Minor and consequential amendments, savings and transitional provisions.

²⁵ Order in Council No. XXII of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

²⁶ Order in Council No. XIII of 1994; amended by Nos.. XVII and XXI of 2002; No. XVI of 2003; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

116. (1) Schedule 3 (which makes minor and consequential amendments) has effect.

(2) The Department may make regulations containing such savings and transitional provisions as it thinks fit in connection with the commencement or implementation of any provision of this Law.

(3) Regulations under this section may, without limitation, make such exceptions, adaptations and modifications of the provisions of this Law, whether or not already in force, as the Department thinks fit.

(4) Savings and transitional provisions made under this section are additional and without prejudice to those made by or under any other provision of this Law.

Citation.

117. This Law may be cited as the Limited Liability Partnerships (Guernsey) Law, 2012.

Commencement.

118. This Law shall come into force on the day specified by regulations of the Department; and different days may be appointed for different provisions and different purposes.

Section 6.

SCHEDULE 1

Office of the Registrar of LLPs - establishment of Registrar and Registers, and functions of the Registrar

Part XXX (Office of the Registrar of Companies and Schedule 2 (Office of the Registrar) of the Companies Law shall have effect for the purposes of this Law with the following modifications –

- (a) for "Registrar of Companies", wherever it appears, read "Registrar of LLPs", and for "Register of Companies", wherever it appears, read "Register of LLPs",
- (b) for "companies", wherever it appears, read "LLPs", and for "company" read LLP,
- (c) for the avoidance of doubt, references to "the purposes of this Law" shall be construed as references to the purposes of this Law,
- (d) references to "disqualification orders" shall be construed as references to disqualification orders under this Law,
- (e) in section 502(1)(a), for "members, directors or creditors" read "members or creditors", and

sections 499(1)(b) (which provides that the Registrar's functions to include advising the Department on new corporate structures), 509 (False or misleading information) and 511 (General right to apply to Court to set aside action of Registrar), shall not have effect.

Section 11.

SCHEDULE 2

Names **of** **LLPs.**

1. (1) The name of an LLP must end with –
 - (a) the expression "Limited Liability Partnership", or
 - (b) the abbreviation "llp" or "LLP".
- (2) No LLP shall carry on business under a name that is not registered under this Law.

Prohibited names.

2. (1) An LLP must not have a name which is the same as a name currently appearing on the Register.
- (2) In determining for the purposes of subsection (1) whether one name is the same as another, there are to be disregarded -
 - (a) the definite article, where it is the first word of the name,
 - (b) the expressions "LLP", and the abbreviations "llp" and "LLP",

- (c) type and case of letters, accents, spaces between letters and punctuation marks,

and "and" and "&" are to be taken as the same.

(3) Without prejudice to the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006²⁷, an LLP must not have a name which, in the opinion of the Registrar, is likely to cause the public to confuse the LLP with -

- (a) some other person already established in Guernsey, or
- (b) a trade mark which has already been registered in accordance with the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006,

unless that other person or the proprietor of that trade mark (as the case may be) has consented to the use of that name.

(4) The Registrar may consider, in exercising his functions under subsection (4) -

- (a) whether the name of the LLP and -

²⁷ Ordinance No. I of 2006; amended by the Trade Marks (Bailiwick of Guernsey) (Amendment) Ordinance, 2006.

(i) the name of the person already established in Guernsey or elsewhere, or

(ii) the trade mark (as the case may be),

are the same or similar, and

(b) whether the LLP engages in the provision of the same or similar goods and services as -

(i) the person already established in Guernsey or elsewhere, or

(ii) the goods and services in respect of which the trade mark was registered (as the case may be).

(5) An LLP must not have a name which, in the opinion of the Registrar, gives so misleading an indication of its activity as to be likely to cause confusion.

(6) An LLP must not have a name -

(a) the use of which would in the opinion of the Registrar constitute a criminal offence, or

(b) which would in the opinion of the Registrar be contrary to

public policy or to accepted principles of morality.

(7) An LLP must not have a name which in the opinion of the Registrar implies, or might be taken to imply, royal or government connection, support or patronage, unless Her Majesty's Procureur has given written permission for the use of that name.

Section 116.

SCHEDULE 3

Minor and consequential amendments

1. In section 137(2)(a) of the Companies Law, after "under Part XXV,", insert "or under Part V of the Limited Liability Partnerships (Guernsey) Law, 2012,".

[income tax amendments]