

STATES OF JERSEY



DRAFT LIMITED LIABILITY PARTNERSHIPS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 4th December 2012
by the Minister for Economic Development**

STATES GREFFE



Jersey

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REPORT

The Limited Liability Partnership (Jersey) Law 1997 (the “LLP Law”) has now been in force for some 15 years with no LLP structures being set up in the Island. The major reason is the requirement for a £5 million bond which must be maintained by the LLP and cannot be used as security for lending.

There are over 30,000 LLPs in the United Kingdom and other jurisdictions, and it is a popular alternative structure to the use of a company for trading partners. Many other jurisdictions have also developed LLPs, such as Singapore, and Qatar.

No other jurisdiction requires a bond as a means of creditor protection. It is considered that a more effective balance is struck between the requirements of trading partners and insolvency concerns by the new requirement for solvency statements to be filed annually. These prevent withdrawals being made by partners unless the LLP is solvent, and provides guidance for potential business partners as to the solvency of the partnership.

Accordingly following consultation, the proposed amendment to the existing 1997 LLP Law by Regulations would remove the onerous requirements of the 1997 Law to enable trading partners to use LLPs in the Island.

The bond is replaced by the requirement for a solvency statement to be filed on an annual basis by the partners of the LLP which confirms the solvency of the LLP and that it can continue to pay debts over the coming year. This provision is based on a policy adopted in the Companies (Jersey) Law 1991, and is deemed appropriate for the jurisdiction.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these Draft Regulations.

Explanatory Note

These Regulations remove the requirement for a limited liability partnership to maintain the “financial provision” described in Article 6 of the Limited Liability Partnerships (Jersey) Law 1997 (the “Law”), replacing it with a requirement for a limited liability partnership to make a “specified solvency statement” before any partnership property may be withdrawn from the limited liability partnership. It makes consequential amendments to the Law and to the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998 (the “1998 Regulations”).

Currently, under Article 6 of the Law, the “financial provision” requires one or more banks or insurance companies, upon dissolution of the limited liability partnership, to pay the person responsible for winding up the affairs of the limited liability partnership an amount, or aggregate amount, which is not less than £5 million, without set-off or retention of any kind. This financial provision must be maintained from the date the limited liability partnership is registered until whichever is the earlier of the date the payment is made or the date of the cancellation of the registration of the limited liability partnership. The financial provision must not be assigned, charged or otherwise encumbered by the limited liability partnership. If the payment is not made to the person responsible for the winding up, as required, the persons who were partners in the limited liability partnership immediately before its dissolution will be liable to any creditor who would otherwise have been paid from the payment; and where the financial provision was not maintained at the time when the debt was incurred or arose, or the loss was caused, which gave rise to the creditor’s claim, any person who was a partner at that time shall be so liable.

Regulation 4 replaces Article 6 of the Law and, in doing so, introduces the concept of a “specified solvency statement”, which is a statement made by the limited liability partnership in which it states that, in its opinion, having regard to the prospects of the limited liability partnership and the intentions of the partners with respect to the management of the limited liability partnership’s business, and the amount and character of the financial resources that will be available to the limited liability partnership, the limited liability partnership will be able to continue to carry on business and discharge its liabilities as they fall due for the period of 12 months immediately following the date of the specified solvency statement, or until the dissolution of the limited liability partnership, if that occurs first.

A limited liability partnership may make a specified solvency statement at any time, but it must not allow a partner or former partner to withdraw any limited liability partnership property at any time when it has not made a specified solvency statement in the 12 months immediately preceding the withdrawal. If a partner or former partner withdraws any limited liability partnership property at any time when either the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal, or has made a specified solvency statement without having reasonable grounds for the opinion given in that statement, the partner or former partner will be liable to return the property to the limited liability partnership. If the property is no longer available to be returned, or the limited liability partnership so requires, the partner or former partner must instead pay to the limited liability partnership a sum equal to the higher of the value of the property as at the date the property was withdrawn and its value as at the date of payment for the property. However, under new Article 6(6), the liability to return limited liability partnership property will not apply if the Royal Court declares that it is satisfied that at the time of the withdrawal the limited liability partnership was solvent, that it has

subsequently made a specified solvency statement and that it would be contrary to the interests of justice for the partner or former partner to remain liable.

The requirement to return limited liability partnership property under Article 6 will also not apply where liability for a debt or loss arises under Article 5(3) or (4) of the Law. Under Article 4(1) of the Law, a limited liability partnership is liable for any debt or loss for which, if the limited liability partnership were an ordinary partnership, the partners would otherwise be liable, either jointly or jointly and severally. Under Article 5(1) of the Law, a partner or former partner in a limited liability partnership is not liable for any debt or loss to which Article 4(1) applies, including any debt of, or loss caused by the act of, another partner in the partnership. However, Article 5(1) does not apply in the circumstances set out in Article 5(3) or 5(4).

By Article 5(3), where any limited liability partnership property, including a share in the partnership profits, is withdrawn by a partner at a time when the limited liability partnership is unable to pay its debts, or if the limited liability partnership becomes unable to pay its debts as a result of the withdrawal, the partner will be liable for any debt or loss to which Article 4(1) applies, but his or her liability is limited to an amount equal to the value of the withdrawal, less any amount previously recovered from him or her by virtue of Article 5(3) or Article 5(4). By Article 5(4), where, during the period of 6 months preceding the time when a limited liability partnership becomes unable to pay its debts, any limited liability partnership property, including a share in the partnership profits, is withdrawn by a partner other than in the ordinary course of the affairs of the partnership, the partner will be liable for any debt or loss to which Article 4(1) applies, but his or her liability is limited to an amount equal to the value of the withdrawal, less any amount previously recovered from him or her by virtue of Article 5(4) or 5(3).

By new Article 6(7), where a partner or former partner withdraws any limited liability partnership property in the circumstances described in Article 6(4) (that is, at any time when the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal, or has made one without having reasonable grounds for the opinion given in that statement), liability to return the property under Article 6(4) will cease to apply if, before the property has been returned to the limited liability partnership, liability arises under either Article 5(3) or 5(4) in respect of that property. In those circumstances the partner or former partner will remain liable for any debt or loss under Article 5(3) or 5(4), as the case may be.

When making the annual declaration to the registrar, as required under Article 18 of the existing Law, the “designated partner” (defined in the Law as any partner identified as such in the declaration or, if none, the partner whose name first appears in the statement of partners in the declaration) must also deliver a statement to the registrar stating whether or not any specified solvency statement has been made by the limited liability partnership on or after 1st March of the previous year; and send any specified solvency statement that has been so made to the registrar.

New Article 6 also provides for a specified solvency statement to be a statement for the purposes of Article 8(4) of the Law, and an accounting record for the purposes of Article 9(1) of the Law. The effect of this provision is that a copy of any specified solvency statement sent to the registrar must be kept at the registered office of the limited liability partnership, it must be kept for 10 years, and the limited liability partnership must take reasonable precautions to prevent its loss, destruction or falsification and facilitate detection and correction of any inaccuracies in it.

Regulation 1 defines “Law” and “1998 Regulations”.

Regulations 2, 3, 5, 6, 7, 8 and 9 all amend the Law so as to remove cross-references and provisions that were only relevant to the financial provision contained in the old Article 6 of the Law.

The 1998 Regulations make provision for the winding up of insolvent limited liability partnerships and, for those purposes, make modifications to the Law. *Regulations 10 and 11* amend the 1998 Regulations so as to remove cross-references and provisions that were only relevant to the financial provision contained in the old Article 6 of the Law.

Regulation 12 gives the title to these Regulations and provides that they will come into force the day after they are made.



Jersey

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(AMENDMENT OF LAW) (JERSEY)
REGULATIONS 201-**

Arrangement

Regulation

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Jersey

DRAFT LIMITED LIABILITY PARTNERSHIPS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 44 and 45 of the Limited Liability Partnerships (Jersey) Law 1997¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“Law” means the Limited Liability Partnerships (Jersey) Law 1997²;

“1998 Regulations” means the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998³.

2 Article 1 of Law amended

In Article 1 of the Law –

- (a) in paragraph (1), in the definition “declaration” for the words “Article 17” there shall be substituted the words “Article 6, 17”; and
- (b) in paragraph (6) the words “except as provided in Article 6(8),” shall be omitted.

3 Article 5 of Law amended

In Article 5(1) of the Law for the words “Article 6(4)” there shall be substituted the words “Article 6(5)”.

4 Article 6 of Law substituted

For Article 6 of the Law there shall be substituted the following Article –

“6 Specified solvency statement

- (1) A ‘specified solvency statement’ is a statement made by the limited liability partnership in which it states that, in its opinion, having regard to –
 - (a) the prospects of the limited liability partnership and the intentions of the partners with respect to the management of the limited liability partnership’s business; and
 - (b) the amount and character of the financial resources that will be available to the limited liability partnership,the limited liability partnership will be able to –
 - (i) continue to carry on business, and
 - (ii) discharge its liabilities as they fall due,until the date which is the earlier of the expiry of the period of 12 months immediately following the date of the specified solvency statement and the dissolution of the limited liability partnership.
- (2) A limited liability partnership may make a specified solvency statement at any time.
- (3) A limited liability partnership shall not permit a partner or former partner to withdraw any limited liability partnership property at any time when the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal.
- (4) Paragraph (5) applies where a partner or former partner withdraws any limited liability partnership property at any time when –
 - (a) the limited liability partnership has not made a specified solvency statement in the 12 months immediately preceding the withdrawal; or
 - (b) the limited liability partnership has made a specified solvency statement without having reasonable grounds for the opinion given in that statement.
- (5) Where this paragraph applies then subject to paragraph (7), the partner or former partner is liable –
 - (a) to return the property to the limited liability partnership; or
 - (b) if the property withdrawn was otherwise than in cash and either –
 - (i) the property is no longer available to be returned, or
 - (ii) the limited liability partnership so requires,to pay to the limited liability partnership a sum equal to the higher of the value of the property as at the date the property was withdrawn and its value as at the date of payment for the property under this Article.
- (6) The liability of a partner or former partner to return or pay for limited liability partnership property in accordance with

paragraph (5) shall not apply where the Court, upon the application of the partner or former partner, declares that it is satisfied that –

- (a) at the time of the withdrawal the limited liability partnership was solvent;
- (b) subsequent to the withdrawal the limited liability partnership made a specified solvency statement; and
- (c) it would be contrary to the interests of justice for the partner or former partner to remain liable under paragraph (5).

(7) Paragraph (5) and (6) shall cease to apply where –

- (a) a partner or former partner has withdrawn any limited liability property in the circumstances described in paragraph (4); and
- (b) that property has not been returned to the limited liability partnership before that partner or former partner has become liable under Article 5(3) or 5(4) for a debt or loss to which Article 4(1) applies.

(8) When the designated partner delivers the annual declaration to the registrar, as required by Article 18, he or she shall also –

- (a) deliver a statement to the registrar stating whether or not any specified solvency statement has been made by the limited liability partnership on or after 1st March of the previous year; and
- (b) deliver to the registrar with the annual declaration any specified solvency statement that has been so made.

(9) Nothing in this Article shall prevent a limited liability partnership from making a statement as to its solvency that is not a specified solvency statement, but such statement may not be treated as, or held out as, a specified solvency statement for the purpose of this Article.

(10) A specified solvency statement is –

- (a) a statement for the purposes of Article 8(4)(d); and
- (b) an accounting record for the purposes of Article 9(1).”.

5 Article 24 of Law amended

Article 24(4) of the Law shall be omitted.

6 Article 27 of Law omitted

Article 27 of the Law shall be omitted.

7 Article 30 of Law amended

Article 30(1) and 30(2) of the Law shall be omitted.

8 Article 32 of Law amended

For Article 32(4) of the Law there shall be substituted the following paragraph –

“(4) In determining whether or not to recognize an order the Court shall have regard to whether the grounds on which it is made would constitute grounds for dissolution in Jersey.”.

9 Article 46 of Law amended

Article 46(3) of the Law shall be omitted.

10 Schedule 1 to 1998 Regulations amended

- (1) Paragraph 4 of Schedule 1 to the 1998 Regulations shall be amended so that in the inserted Article 25C(4) –
 - (a) at the end of sub-paragraph (b) there is added the word “and”;
 - (b) in sub-paragraph (c), for the words “as such; and” there are substituted the words “as such.”; and
 - (c) sub-paragraph (d) is omitted.
- (2) Paragraph 6 of Schedule 1 to the 1998 Regulations shall be omitted.
- (3) Paragraph 7 of Schedule 1 to the 1998 Regulations shall be amended so that inserted Article 27A(3) and (4) is omitted.
- (4) Paragraph 9 of Schedule 1 to the 1998 Regulations shall be amended so that –
 - (a) in the inserted Article 28B(1) for the words “and how any payment made pursuant to Article 6(2) or (5) and the limited liability partnership property have” there are substituted the words “and how the limited liability partnership property has”; and
 - (b) the inserted Article 28C is omitted.
- (5) Paragraph 13 of Schedule 1 to the 1998 Regulations shall be amended so that in the inserted Article 31J –
 - (a) in paragraph (a) after the word “*désastre*,” there is added the word “and”;
 - (b) in paragraph (b) for the words “Viscount; and” there is substituted the word “Viscount.”; and
 - (c) paragraph (c) is omitted.

11 Schedule 2 to 1998 Regulations amended

Part 5 of the Law, as set out in Schedule 2 to the 1998 Regulations, shall be amended as follows –

- (a) in Article 25C(4) –
 - (i) at the end of sub-paragraph (b) there shall be added the word “and”,
 - (ii) in sub-paragraph (c), for the words “as such; and” there shall be substituted the words “as such.”, and

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- (iii) sub-paragraph (d) shall be omitted;
 - (b) Article 27 shall be omitted;
 - (c) Article 27A(3) and 27A(4) shall be omitted;
 - (d) in Article 28B(1) for the words “and how any payment made pursuant to Article 6(2) or (5) and the limited liability partnership property have” there shall be substituted the words “and how the limited liability partnership property has”;
 - (e) Article 28C shall be omitted;
 - (f) Article 30(1) and 30(2) shall be omitted; and
 - (g) in Article 31J –
 - (i) in paragraph (a) after the word “*désastre*,” there shall be added the word “and”,
 - (ii) in paragraph (b) for the words “Viscount; and” there shall be substituted the word “Viscount.”, and
 - (iii) paragraph (c) shall be omitted.

12 Citation and commencement

These Regulations may be cited as the Limited Liability Partnerships (Amendment of Law) (Jersey) Regulations 201- and shall come into force the day after they are made.

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- ¹ *chapter 13.475*
² *chapter 13.475*
³ *chapter 13.475.10*