

STATES OF JERSEY



Jersey

DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT) (JERSEY) LAW 202-

**Lodged au Greffe on 30th March 2020
by the Minister for External Relations**

STATES GREFFE



Jersey

DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations has made the following statement –

In the view of the Minister for External Relations, the provisions of the Draft Limited Liability Companies (Amendment) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**
Minister for External Relations

Dated: 27th March 2020

REPORT

Background and purpose

In September 2018, the States adopted the [Limited Liability Companies \(Jersey\) Law 2018](#) (the “LLC Law”) which provides for the establishment of limited liability companies (“LLCs”) in Jersey. These legal entities are prevalent in the United States and share features with both companies and partnerships. We consider the closest local equivalent to the LLC would be a limited liability partnership.

The LLC Law was introduced with a view to Jersey becoming an increasingly attractive jurisdiction for US business, as well as catering to our growing US market generally.

Since the States approved the LLC Law, the Government of Jersey has engaged with the Jersey Finance LLC Working Group (comprising of leading industry practitioners) and the Jersey Financial Services Commission (the ‘Commission’) in considering necessary amendments to the LLC Law.

This draft amending Law clarifies certain existing provisions of the LLC Law and aims to ensure that the Jersey LLC is an attractive and familiar product to the target market, while still operating within Jersey’s well-respected regulatory framework and in line with international standards.

Ongoing work continues with the Commission and Jersey Finance to make the necessary consequential and transitional provisions to ensure that LLCs are properly regulated and functional when the LLC Law is brought into force.

The draft amendments

The substantive amendments to the LLC Law are explained below.

Article 4

LLCs are managed by a manager (if appointed) and in the absence of a manager, by its members. An application to register an LLC in Jersey is made by declaration to the company registrar and must contain certain information set out in the LLC Law. This provision clarifies that if a member or manager of an LLC becomes aware at any time during the existence of an LLC that information contained in the declaration to register the LLC was false or inaccurate, then the LLC must deliver an amendment statement to the registrar to correct that false or inaccurate information. Subsequent changes to information contained in the declaration are captured on an ongoing basis through other legislative and regulatory requirements.

Article 5

An application to register an LLC will be made online through the registry portal, and therefore it is appropriate that the relevant form is specified by registrar appointed under the LLC Law rather than in an Order.

Article 6

This provision makes the following amendments:

- (i) To require details of the secretary and deputy secretary to be recorded in the ‘list’ maintained at the LLC’s registered office. This reflects the practice in respect of other Jersey vehicles.
- (ii) To state that a notice of a trust must not be entered on the ‘list’ of members.
- (iii) To explain that subject to the LLC agreement, an assignee of an LLC interest who has not yet been admitted as a member is not required to be included in the list of members.

Article 15

The rules of customary law of partnerships applied to LLCs in the original LLC Law and are now disapplied through the deletion of the Article. The reason for this is because such a provision is unfamiliar to the target market for LLCs. Furthermore, the LLC is a hybrid vehicle with features akin to both a company and a partnership, and to limit the applicable customary law to one of those vehicles was considered potentially problematic. Through deleting the Article, consideration can instead be given to the unique features of the particular LLC and a broader range of sources, including interpretation of LLC legislation in other jurisdictions as applicable.

Article 16

The duties of the manager of an LLC are amended to bring the provision into line with LLC legislation in other jurisdictions. In addition, a provision to ratify a breach of a duty by a manager is introduced where the members unanimously agree and where the LLC remains able to discharge its liabilities after the breach. This provision is equivalent to an existing provision in the [Companies \(Jersey\) Law 1991](#).

Article 18

The LLC Law is amended to specifically address the situation where an offence committed by the LLC is demonstrated to have been committed with the consent or connivance of a manager or is attributable to the negligence of a manager of the LLC. This provision also covers the situation where the LLC is managed by its members and an offence has been committed.

Article 19

Article 19 provides for the draft Law to be brought into force by Appointed Day Act.

Financial and manpower implications

There are no financial or manpower implications that would arise for the States from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT**Human Rights Notes on the Draft Limited Liability Companies (Amendment) (Jersey) Law 202- (“the draft Law”)**

These Notes have been prepared in respect of the Draft Limited Liability Companies (Amendment) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The Draft Limited Liability Companies (Amendment) (Jersey) Law 202- gives rise to no human rights concerns.

It makes certain clarification and technical amendments to the Limited Liability Companies (Jersey) Law 2018 (“the 2018 Law”). The Law 2018 allows for the voluntary creation of a type of corporate entity, and provides broad freedom for those creating that entity to set its rules.

The draft Law further clarifies provisions enabling the proper regulatory and other safeguards already in existence in the 2018 Law which prevent the abuse of limited liability, and ensure that those who may choose to deal with a limited liability company will be properly informed of the type of entity with which they are to transact business.

As this draft Law builds on the 2018 Law, which is itself concerned with matters of ordinary company law, no human rights concerns arise.

Human rights principles are silent as to what types of corporate entities should be permitted in a jurisdiction and how they should be constituted.

EXPLANATORY NOTE

This Law amends the Limited Liability Companies (Jersey) Law 2018 (the “LLC Law”), which provides for the establishment and regulation of limited liability companies.

Article 3 makes it clear that an LLC agreement may confer rights on a third party and provide for the way in which those rights may be varied or extinguished. However, if an LLC agreement does not provide otherwise, those rights may only be varied or extinguished with the consent of the third party. The amendment also makes it clear that, despite not being a party to an LLC agreement, a third party is entitled to enforce any rights conferred on the third party in an LLC agreement. An LLC agreement is any agreement, written, oral or implied, of the members as to the affairs of a limited liability company and the conduct of its business.

Article 4 makes it clear that an amendment statement must be delivered to the registrar within 21 days of a manager or, if there is no manager, a member becoming aware that, at the time a declaration was delivered to the registrar under Article 4(1), a statement in the declaration was false or information (other than the details of the registered office of the limited liability company) in the declaration was inaccurate. *Article 1* inserts an amended definition of “amendment statement”.

Article 5 removes the requirement to prescribe the form for making an application to reserve the name of a limited liability company and instead requires that the application be made in a form approved by the registrar.

Article 6 requires a limited liability company to keep at its registered office a document containing a list of the name and address of each deputy secretary and secretary of the limited liability company, in addition to the name and address of each member and manager. If the limited liability company has 25 or more members, that list must be kept in alphabetical order. The amendment also makes it clear that notice of a trust (whether express, implied or constructive) must not be entered on that list and, subject to an LLC agreement, the details of an assignee of an LLC interest are not required to be entered. An LLC interest is a member’s share of the profits and losses of a limited liability company, a member’s right to receive distributions of assets, and any other rights, benefits and obligations conferred on a member by the LLC agreement or the LLC Law. The amendment also corrects a drafting error.

Articles 7, 9, 10, 11 and 17 correct minor drafting errors.

Article 8 makes it clear that any interest of a member who has not acquired an LLC interest in a limited liability company is movable property.

Article 12 makes it clear that any liability for, or obligation on, a member to make a contribution under Article 30 of the LLC Law or to return money or other property paid or distributed in contravention of Part 6 may be compromised only with the consent of all the members of the limited liability company.

Article 13 makes it clear that a limited liability company must not make a distribution to a member or release a member from the performance of an obligation if the limited liability company is insolvent.

Article 14 makes it clear that the assignee of an LLC interest is a person not yet admitted as a member of the limited liability company.

Article 15 deletes Article 46 of the LLC Law with the effect of disapplying the rules of customary law applicable to partnerships.

Article 16 makes it clear that a manager does not owe any duty (fiduciary or otherwise) to the limited liability company or any member or other person other than a duty to act in good faith in connection with the management of the limited liability company. Subject to the LLC agreement, an act or omission of a manager that constitutes a breach of a duty to act in good faith may be authorised or ratified if all the members of the limited liability company authorise or ratify the act or omission and, after the act or omission, the limited liability company will be able to discharge its liabilities as they fall due.

Article 18 substitutes Article 57 of the LLC Law to apply the provision specifically to limited liability companies with the effect that where an offence is committed by a limited liability company with the consent or connivance of, or due to the neglect of, a manager of the limited liability company, the manager is also guilty of the offence and liable to the penalty provided in the same way as the limited liability company.

Article 19 provides for the title by which this Law may be cited and for its coming into force on such day or days as the States may by Act appoint.



Jersey

DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT) (JERSEY) LAW 202-

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Jersey

DRAFT LIMITED LIABILITY COMPANIES (AMENDMENT) (JERSEY) LAW 202-

A LAW to amend the Limited Liability Companies (Jersey) Law 2018.

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

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

1 Limited Liability Companies (Jersey) Law 2018 amended

- (1) The Limited Liability Companies (Jersey) Law 2018¹ is amended in accordance with this Law.
- (2) In this Law, a reference to an Article by number only is a reference to the Article of the same number in the Limited Liability Companies (Jersey) Law 2018.

2 Article 1 (interpretation) amended

In Article 1(1), for the definition of “amendment statement” there is substituted –

“ “amendment statement” is to be construed in accordance with Article 5(2).”.

3 Article 3 (LLC agreement generally) amended

In Article 3, for paragraph (6) there is substituted –

- “(6) An LLC agreement may confer rights on a third party and provide for the way in which those rights may be varied or extinguished. However, if an LLC agreement does not provide otherwise, those rights may only be varied or extinguished with the consent of the third party.

- (6A) Despite not being a party to an LLC agreement, a third party is entitled to enforce any rights conferred on the third party in an LLC agreement.”.

4 Article 5 (amendment of declaration) amended

For Article 5, there is substituted –

“5 Amendment of declaration

- (1) This Article applies to a limited liability company if, during the existence of the limited liability company, a manager of the limited liability company or, if there is no manager, a member of the limited liability company becomes aware that, at the time the declaration was delivered to the registrar under Article 4(1) –
- (a) a statement in the declaration was false; or
 - (b) information in the declaration (other than details of the registered office of the limited liability company) was inaccurate.
- (2) A limited liability company to whom this Article applies must, within 21 days of becoming aware, deliver an amendment statement to the registrar that –
- (a) is signed by an authorized person;
 - (b) specifies the information in the declaration that was false or inaccurate; and
 - (c) specifies the correction that should be made to the declaration.
- (3) A limited liability company to whom this Article applies commits an offence if the limited liability company fails to comply with paragraph (2).
- (4) If the registrar is satisfied that the correction complies with the requirements of this Law, the registrar must register the amendment statement and give effect to the change –
- (a) in the certificate of formation issued under Article 4; or
 - (b) if a certificate of formation has been issued, by issuing an amended certificate of formation.”.

5 Article 7 (name of limited liability company) amended

In Article 7 –

- (a) in paragraph (2), for “the prescribed form” there is substituted “a form approved by the registrar”;
- (b) in paragraphs (8) and (10), for “Article 5(2)” there is substituted “Article 5(4)(b)”.

6 Article 8 (registered office) amended

In Article 8 –

- (a) for paragraph (6)(a) there is substituted –
 - “(a) a document containing a list of the name and address of each member, manager, deputy secretary and secretary of the limited liability company;”;
- (b) for paragraph (7) there is substituted –
 - “(7) If a limited liability company has 25 or more members, the list of names referred to in paragraph (6)(a) must be kept in alphabetical order.”;
- (c) after paragraph (7) there is inserted –
 - “(7A) In relation to the list that is required to be kept under paragraph (6)(a), a limited liability company –
 - (a) must not enter notice of a trust, whether express, implied or constructive; and
 - (b) subject to the LLC agreement, is not required to record the details of an assignee of an LLC interest (being a person not yet admitted as a member).”;
- (d) in paragraph (9)(a), “and under the LLC agreement such information is intended to be kept confidential” is deleted.

7 Article 12 (series of members, managers, LLC interests or assets) amended

In Article 12 –

- (a) in paragraph (8)(a), for “contract” there is substituted “contract,”;
- (b) in paragraph (9)(a), for “liabilities,” there is substituted “liabilities”.

8 Article 13 (admission of members and LLC interests) amended

In Article 13(10), after “company” there is inserted “and any interest of a member who has not acquired an LLC interest in a limited liability company”.

9 Article 16 (voting of members) amended

In Article 16(5), “or as” is deleted.

10 Article 21 (management of limited liability company) amended

In Article 21(2), for “LLC shall vest” there is substituted “limited liability company vests”.

11 Article 25 (voting of managers) amended

In Article 25(2), “shall be decided” is deleted.

12 Article 30 (liability for contribution) amended

In Article 30, for paragraph (4) there is substituted –

- “(4) Subject to the LLC agreement, any liability for, or obligation on, a member to make a contribution under this Article or to return money or other property paid or distributed in contravention of Part 6 may be compromised only with the consent of all the members.”.

13 Article 37 (limitation on distribution) amended

For Article 37, there is substituted –

“37 Limitation on distribution

- (1) A limited liability company must not make a distribution to a member or release a member from the performance of an obligation if the limited liability company is insolvent.
- (2) For a period of 6 months from the date of receipt by a member of a distribution or purported release from the performance of an obligation in contravention of paragraph (1) or in the case of fraud, the member is liable to the limited liability company for the amount of the distribution or for performance of the obligation purportedly released.
- (3) In this Article, “distribution” does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits programme.”.

14 Article 39 (assignee right to participate in management of limited liability company) amended

In Article 39, for “not admitted as a member shall have” there is substituted “(being a person not yet admitted as a member) has”.

15 Article 46 (rules of customary law) deleted

Article 46 is deleted.

16 Article 47 (fiduciary and other duties owed and not owed) amended

In Article 47 –

- (a) for paragraph (1) there is substituted –

“(1) Subject to the LLC agreement, a manager does not owe any duty (fiduciary or otherwise) to the limited liability company or any member or other person in respect of the limited liability company other than a duty to act in good faith in respect of the rights, authorities and obligations that are exercised or performed or to which such manager is subject in connection with the management of the limited liability company.”;
- (b) after paragraph (2) there is inserted –

- “(3) Subject to the LLC agreement, an act or omission of a manager that constitutes a breach of a duty to act in good faith may be authorised or ratified if –
- (a) all the members of the limited liability company authorise or ratify the act or omission; and
 - (b) after the act or omission, the limited liability company will be able to discharge its liabilities as they fall due.”.

17 Article 56 (offences of giving false or misleading etc. information) amended

In Article 56(1), for “or to delivered” there is substituted “or to be delivered”.

18 Article 57 (criminal liability of partners, directors and other officers) substituted

For Article 57 there is substituted –

“57 Criminal liability of managers

- (1) Where an offence under this Law committed by a limited liability company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is a manager of the limited liability company or any person purporting to act in any such capacity, the person is also guilty of the offence and liable in the same manner as the limited liability company to the penalty provided for that offence.
- (2) Where the affairs of a limited liability company are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member’s functions of management as if the member were a manager of the limited liability company.”.

19 Citation and commencement

This Law may be cited as the Limited Liability Companies (Amendment) (Jersey) Law 202- and comes into force on such day or days as the States may by Act appoint.

ENDNOTES

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¹ *L.32/2018*