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# STATES OF JERSEY



## LIMITED PARTNERSHIPS WITH LEGAL PERSONALITY: WHITE PAPER SEPTEMBER 2009

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Presented to the States on 9th September 2009  
by the Minister for Economic Development

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STATES GREFFE



# White Paper

## Limited Partnerships with legal personality

September 2009

The Economic Development Department invites comments on the Draft Separate Limited Partnerships (Jersey) Law 200- and Draft Incorporated Limited Partnerships (Jersey) Law 200-, copies of which are attached to this Consultation Paper.

The closing date for responses is **Monday 5th October 2009**.

### Responses should be sent to:

James Mews  
Director, Finance Industry Development  
Chief Minister's Department  
5th Floor, Cyril Le Marquand House  
The Parade  
St. Helier  
JE4 8QT

Telephone: 01534 440413  
Facsimile: 01534 440408  
e-mail: [j.mews@gov.je](mailto:j.mews@gov.je)

Robert Kirkby at Jersey Finance Limited is co-ordinating an industry response that will incorporate any matters raised by local firms or entities. His contact details are:

Robert Kirkby  
Technical Director  
Jersey Finance Limited  
27 Hill Street  
St. Helier  
JE2 4UA

Telephone: 01534 836004  
Facsimile: 01534 836001  
e-mail: [Robert.Kirkby@jerseyfinance.je](mailto:Robert.Kirkby@jerseyfinance.je)

It is the policy of Jersey Finance to make individual responses it receives available to the Economic Development Department upon request, unless a respondent specifically requests otherwise.

Public submissions – Please note that responses submitted to all States public consultations may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a final published report, reported in the media, published on a States of Jersey website, listed on a consultation summary, etc.). If a respondent has a particular wish for confidentiality, such as where the response may concern an individual's private life, or matters of commercial confidentiality, please indicate this clearly when submitting a response.

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## 1. Introduction

- 1.1. The Economic Development Department invites comments on the Draft Separate Limited Partnerships (Jersey) Law 200- and Draft Incorporated Limited Partnerships (Jersey) Law 200- (“**the draft Law**”), a copy of which is attached to this Consultation Paper.
- 1.2. Since the passing of the Limited Partnerships (Jersey) Law 1994 (“**the 1994 Law**”), Jersey limited partnerships have proved increasingly popular, particularly as collective investment vehicles, and particularly among private equity investors. The 1994 Law is widely considered to be both modern and clearly drafted, and we seek to build on that success with the introduction of two further limited partnership Laws, introducing different possible legal statuses for limited partnerships.
- 1.3. At present a Jersey limited partnership does not have a legal personality of its own. In Scotland limited partnerships do have legal personality, while in Guernsey limited partnerships have a choice as to whether to adopt legal personality or not. It is believed that a wider range of uses of Jersey limited partnerships would be made by consumers if they had the option of creating a limited partnership with legal personality.
- 1.4. Following previous consultation on this topic, it was decided against following the Guernsey route of allowing a choice within the existing law. It is considered that this route might have an adverse effect on existing Jersey limited partnerships formed upon the basis of advice given under the 1994 Law. We therefore propose to introduce two new free-standing Laws, each modelled closely on the 1994 Law, but each providing for a limited partnership with a different legal status. The two Laws are the Draft Separate Limited Partnerships (Jersey) Law 200- (“**the SLP Law**”) and the Draft Incorporated Limited Partnerships (Jersey) Law 200- (“**the ILP Law**”). These provide respectively for the establishment of Separate Limited Partnerships (“**SLPs**”) and Incorporated Limited Partnerships (“**ILPs**”). The SLP will have legal personality but without being a body corporate (as is already the case for a Scottish limited partnership), whereas the ILP will be a body corporate.
- 1.5. The provision of two different possibilities is intended to allow those setting up limited partnerships maximum flexibility in choosing a structure which matches their needs.

## 2. Draft Separate Limited Partnerships (Jersey) Law 200-

- 2.1. This follows the Scottish model of limited partnership in having a legal personality separate from that of the partners but without being a body corporate. It will be called a ‘Separate Limited Partnership’ as a contraction of ‘Separate Legal Personality Limited Partnership’, which was considered too lengthy to be suitable as a name.
  - 2.2. The SLP will be capable of owning property in its own name (as opposed to limited partnerships under the 1994 Law, which hold property in the name of one or more general partners as an asset of the limited partnership in accordance with the terms of the partnership agreement). The SLP will also be
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capable of entering into contracts in its own name. However, unlike a body corporate, it will not have perpetual succession. The existence of the separate legal personality will not affect the rights of the partners as between themselves. In many ways, SLPs will be similar to existing Scottish limited partnerships, although there are also some potential advantages to the Jersey model which are mentioned below.

- 2.3. **Articles 1 and 2** are definition articles and mirror Articles 1 and 2 of the 1994 Law.
- 2.4. **Article 3** sets out some basic requirements relating to the formation of SLPs. Paragraphs (1)–(3) mirror Article 3 of the 1994 Law. Paragraph (4) states explicitly that an SLP is a legal person without being a body corporate. Paragraph (5) provides for an SLP to have unlimited capacity, i.e. the ultra vires doctrine does not apply and the SLP may do anything which a natural person could do. This is in accordance with our general policy not to limit the capacity of artificial legal persons, to protect third parties who may be unaware of any limits.
- 2.5. It is noteworthy that while a Scottish Limited Partnership must be “between persons carrying on business with a view to profit”, Article 3(3) retains the more flexible Jersey provision that an SLP may be set up for any lawful purpose. A further potential advantage of the SLP Law over the Scottish model is that the U.K. Partnership Act 1890 provides that, “*In Scotland* a firm is a legal person distinct from the partners of which it is composed...”, which leaves open the possibility that a Scottish limited partnership should not be treated as having such personality outside Scotland. Article 3(4) of the draft Law by contrast is completely unqualified in stating that an SLP is a legal person.
- 2.6. **Article 4** mirrors Article 4 of the 1994 Law (as amended). In effect, there are two requirements for an association of persons to be an SLP. There must be a partnership agreement, as with a general partnership, and the SLP must be registered by a declaration under Article 4. These are the same requirements as for an ordinary limited partnership. It will simply be a matter for the partners to decide to register under the 1994 Law or the SLP Law, depending on whether they wish the limited partnership to have its own legal personality.
- 2.7. **Articles 5 to 11** mirror Articles 5 to 11 of the 1994 Law (as amended), with changes merely to refer to ‘separate limited partnerships’ rather than ‘limited partnerships’. This is because the SLP Law is intended to operate in a similar manner to the 1994 Law, save only for the additional feature of separate legal personality. However, Article 11(2) of the 1994 Law has not been carried across into the SLP Law, as this paragraph deals with partnership property, for which see the following article. The remainder of Article 11 has also been reworded, but this is a purely stylistic change.
- 2.8. **Article 12** deals with partnership property and does not have an equivalent article in the 1994 Law. This is because the separate legal personality of an SLP makes it possible for partnership property to be vested in the SLP in its own name. Article 12 therefore makes clear that, whether property is vested in the SLP or held in the name of one or more general partners, it will still be

held for the benefit of the partners in accordance with the partnership agreement (cf. Article 11(2) of the 1994 Law). Article 12(2) is intended to reflect the existing position in relation to partnership property, on the assumption that Jersey law is the same as English law in this respect, and following the finding of Hoffman LJ in *Gray (Executor of Lady Fox deceased) v IRC* [1994] STC 360 at 377c. It was felt necessary to restate this principle explicitly in the SLP Law because of the possibility that the introduction of a separate legal person might otherwise cast doubt on this principle.

- 2.9. **Article 13** corresponds to Article 12 of the 1994 Law, dealing with the enforcing of judgments against partnership property. However, Article 13(1) of the SLP Law reflects the fact that an SLP, as a separate legal person, can be sued in its own name, as well as in the name of the general partner. Correspondingly, there is no requirement for a paragraph equivalent to Article 12(3) of the 1994 Law, as even if the SLP is left without a general partner, it will always be possible to obtain judgment against the SLP itself. This will not, however, affect or reduce the potential unlimited liability of the general partner(s) of an SLP.
- 2.10. **Article 14** mirrors Article 13 of the 1994 Law.
- 2.11. **Article 15** mirrors Article 14 of the 1994 Law, but with the addition of paragraph (2), which clarifies that (unlike in the case of a company and its shareholders), the right to profits vests in the limited partners as soon as those profits are struck, without the need for any further distribution. In other words, the insertion of the SLP as a separate legal entity does not interfere with the flow of profits to the limited partners, although those profits may not necessarily be drawn down by the partners.
- 2.12. **Articles 16 to 19** mirror Articles 15 to 18 respectively of the 1994 Law. (In the case of Article 18, as that Article is proposed to be amended by the draft ILP Law, for which see below.)
- 2.13. **Article 20** mirrors Article 19 of the 1994 Law, save that in paragraph (1) “except as provided in this Law” has been expanded to draw the reader’s attention to two individual provisions which might place liability on a limited partner for the debts of the SLP. This is simply intended to add clarity.
- 2.14. **Articles 21 and 22** mirror Article 20 and 21 respectively of the 1994 Law.
- 2.15. **Article 23** mirrors new Article 21A of the 1994 Law. This provision has been inserted in both Laws (a) to draw together the various ways a (separate) limited partnership may be deregistered and (b) to allow a (separate) limited partnership to deregister without dissolving. This might be desirable, for example, if the (separate) limited partnership wishes to re-register in a different jurisdiction, or if it wishes to continue as a general partnership.
- 2.16. **Articles 24 to 29** mirror Articles 22 to 27 respectively of the 1994 Law.
- 2.17. **Article 30**, dealing with legal proceedings and the service of documents is equivalent to Article 28 of the 1994 Law, but it also provides for legal

proceedings to be brought by or against the SLP itself as well as by or against a general partner on behalf of the SLP. The ability to be party to legal proceedings is the essence of legal personality. Correspondingly, provision is made for the service of documents on an SLP, i.e. by delivery to the registered office.

- 2.18. **Articles 31 to 33** mirror Articles 29 to 31 respectively of the 1994 Law.
- 2.19. **Article 34** mirrors new Article 31A of the 1994 Law, and covers the position where a document is required to be delivered to the registrar, but no form has been published.
- 2.20. **Articles 35 to 38** mirror Articles 32 to 35 respectively of the 1994 Law.
- 2.21. **Article 39** mirrors Article 36 of the 1994 Law as it will be amended by the ILP Law, for which see below.
- 2.22. **Article 40** does not correspond to anything in the 1994 Law. It makes clear that the SLP itself, despite being a legal person, is not capable of committing a criminal offence except where the contrary is provided (expressly or implicitly) in the relevant legislation. This reflects the position of an ordinary limited partnership, which cannot commit offences. Liability for any offence would instead fall on the individual partner (or partners) committing the offence.
- 2.23. **Article 41** mirrors new Article 36A of the 1994 Law. This is a now standard provision preventing wrong-doers from hiding from criminal liability behind a corporate shield.
- 2.24. **Article 42** mirrors Article 37 of the 1994 Law and is a standard provision dealing with aiders and abettors.
- 2.25. **Article 43** corresponds to Article 38 of the 1994 Law but reflects the now standard form of the 'Orders' provision. However, we have noted that paragraph (2) of this Article does not reflect the deletion of the corresponding paragraph of Article 38 in the 1994 Law by the Financial Services (Amendment No. 4) (Jersey) Law 2007, and will amend the draft accordingly. Also, there is no equivalent of Article 38(5) of the 1994 Law in the draft SLP Law. This is because of the insertion of Article 2 into the Subordinate Legislation (Jersey) Law 1960, extending that Law automatically to all subordinate enactments unless the contrary is stated.
- 2.26. **Article 44** mirrors Article 39 of the 1994 Law.
- 2.27. **Article 45** provides for amendments to other enactments. As well as the specific amendments set out below, it also provides that references in other laws to "partnerships", "limited partnerships", *etc.* shall include SLPs. This is to make clear that, although an SLP has its own personality, it is still to be treated as a form of partnership.
- 2.28. **Article 46:** paragraph (1) mirrors Article 40 of the 1994 Law, and preserves the application of the customary law of partnerships to SLPs. Paragraph (2)

makes clear that an SLP is not a 1994 Law limited partnership and that nothing in the 1994 Law applies to it.

2.29. **Article 47** deals with citation and commencement.

### **3. Amendments to other Laws**

3.1. The amendments listed in the Schedule to the Registration of Business Names (Jersey) Law 1956, the Control of Borrowing (Jersey) Law 1947 and the Collective Investment Funds (Jersey) Law 1988 all make clear that a “limited partnership”, for the purpose of each of those laws, includes both an SLP and an ILP. These amendments are contained in the SLP Law (although also relevant to ILPs) simply for the sake of convenience.

### **4. Draft Incorporated Limited Partnerships (Jersey) Law 200-**

4.1. Whereas an SLP is very much a limited partnership with the bare addition of legal personality (reflecting the existing position in Scotland and in Guernsey for limited partnerships that opt for legal personality) an ILP adopts some features of a company, and is a wholly new vehicle. It will be a body corporate, having perpetual succession. This may be attractive for a number of reasons. Firstly, there may be an attraction to having body corporate status for those engaging in cross-border transactions, since this gives greater certainty as a matter of international law providing a more substantive rather than procedural reason for the limit of liability afforded to limited partners (but see below for the position of general partners). Secondly, perpetual succession means that those dealing with the ILP can be confident that it will continue to exist and be held accountable for its obligations.

4.2. While the general partner will continue to be liable for the ILP’s debts, this liability will be clearly a secondary one, only arising if the ILP itself defaults. The general partner(s) will act as an agent for the ILP rather than the partners as individuals and in some ways will be similar to a company director. Correspondingly general partners’ duties similar to directors’ duties have been included.

4.3. **Articles 1 and 2** are definition articles and mirror Articles 1 and 2 of the 1994 Law. However, we note that the definition of ‘Court’ has been omitted, and this will be reinserted in the final draft.

4.4. **Article 3** sets out some basic requirements relating to the formation of ILPs. Paragraphs (1), (5) and (6) mirror Article 3 of the 1994 Law, paragraphs (1)–(3) respectively. Paragraph (2) states explicitly that an ILP is a body corporate with legal personality separate from its members.

4.5. Paragraph (3) of Article 3 provides explicitly for the ILP to have perpetual succession: this is characteristic of bodies corporate, and is different from the position with an ordinary partnership. An ordinary partnership (including a limited partnership or an SLP) only exists at the will of the partners. Although some administrative process is necessary to de-register a limited partnership, it can be dissolved simply by the general and limited partners agreeing that this should be the case. A body corporate, on the other hand, continues to exist

forever, unless there is some definite act of dissolution as prescribed by law. It may be that this feature will make ILPs attractive for some purposes, where counter-parties do not wish to deal with an entity (such as a 1994 Law limited partnership, an SLP or a Scottish limited partnership) which can be dissolved at will or by operation of law.

- 4.6. Paragraph (4) of Article 3 provides for an ILP to have unlimited capacity, i.e. the ultra vires doctrine does not apply so that the ILP may do anything which a natural person could do. This is in accordance with the internationally accepted policy not to limit the capacity of artificial legal persons, to protect third parties who may be unaware of any limits.
- 4.7. The note set out under Article 3 of the SLP Law above, in relation to possible advantages in relation to a Scottish limited partnership applies equally in relation to ILPs. In addition, there may be an advantage in having the status of a body corporate, in particular in terms of recognition by foreign jurisdictions, since international law is clear that a body corporate is governed by the law of the jurisdiction where it is incorporated. This might be particularly important if there was a possibility that a limited partner could otherwise be treated by a foreign court as having unlimited liability.
- 4.8. **Article 4** mirrors Article 4 of the 1994 Law (as amended), save that paragraph (7) has been added and that paragraph (9) also incorporates elements similar to Article 9(5) of the Companies (Jersey) Law 1991. The addition of paragraph (7) makes clear that the ILP comes into existence as a body corporate on the issue of the certificate. This is because it is less clear in relation to limited partnerships whether it is the issue of the certificate or the completion of the partnership agreement which should be taken as the commencement date. In the case of a body corporate it is considered important to be very clear about whether or not it exists at any given moment in time.
- 4.9. Paragraph (9) of Article 4 incorporates elements similar to Article 9(5) of the Companies (Jersey) Law 1991, providing that the issue of the certificate is conclusive evidence not only that the application has been submitted, but also that the ILP has been incorporated and that the relevant requirements of the Law have been complied with. This may be important for the purposes of foreign recognition.
- 4.10. **Articles 5 and 6** mirror Articles 5 and 6 respectively of the 1994 Law.
- 4.11. **Article 7** mirrors Article 7 of the 1994 Law, save that the name of an ILP should end “Incorporated Limited Partnership” (or an equivalent short form) to reflect its status and save that paragraph (6) has been added to make clear that a change of name does not take effect until the change has been registered and an amended certificate issued. This reflects the fact that the certificate is conclusive evidence that a body corporate of that name exists.
- 4.12. **Article 8** mirrors Article 8 of the 1994 Law. However we note that the reference in paragraph (11) should be to paragraph (10) and not to paragraph (11).
- 4.13. **Articles 9 and 10** mirror Articles 9 and 10 respectively of the 1994 Law.

- 4.14. **Article 11** corresponds to Article 11 of the 1994 Law. Paragraphs (1) and (2) are a redrafting of paragraph (1) of the 1994 Law. Paragraph (6) mirrors paragraph (3). However, paragraph (2) of the 1994 Law has not been carried across to the ILP Law. This is because ILP property would ordinarily be vested in the ILP, as a body corporate, and not in the general partner(s).
- 4.15. Paragraphs (4) and (5) of Article 11 mirror Article 74 of the Companies (Jersey) Law 1991, and reflect the fact that the general partner of an ILP performs a similar role to a director of a company. These paragraphs require the general partner to act honestly and in good faith, with a view to the best interests of the ILP and to exercise the care, diligence and skill of a reasonable prudent person. They also provide for the members of the ILP collectively to ratify breaches where there is no prejudice to creditors.
- 4.16. Paragraph (3) of Article 11 clarifies that a general partner acts as agent for the ILP. This is to distinguish from the customary law position for limited partnerships, that a general partner acts as agent for him – or herself and for all the limited partners.
- 4.17. Paragraph (7) of Article 11 provides for the general partner to be liable to make good any default by the ILP on its debts. It is a key element of the limited partnership concept that the general partner's liability is not limited and this paragraph is explicit that this concept carries across for ILPs. It was felt necessary to state this explicitly, given that the liability as principal will rest with the ILP as a body corporate, and it might otherwise be argued that this allows the general partner to hide behind a corporate veil.
- 4.18. No equivalent of Article 12 of the 1994 Law was necessary in the ILP Law, as judgments should be obtained against the ILP as a body corporate and enforced against its corporate property. There could be no question that creditors of a member of a body corporate would be able to claim against the body's property, as it is a separate legal person.
- 4.19. **Article 12** mirrors Article 13(1) of the 1994 Law. Paragraphs (2) and (3) of Article 13 of the 1994 Law are not necessary, as the ILP has perpetual succession under Article 3(3).
- 4.20. **Article 13** mirrors Article 14 of the 1994 Law, but with the addition of paragraph (2), which clarifies that (unlike in the case of a company and its shareholders), the right to profits vests in the limited partners as soon as those profits are struck, without the need for any further distribution. In other words, the insertion of the ILP as a separate legal entity does not interfere with the flow of profits to the limited partners' accounts, although those profits may not necessarily be drawn down by the partners.
- 4.21. **Articles 14 to 20** mirror Articles 15 to 21 of the 1994 Law respectively, in the case of Article 18 of the 1994 Law, as that Article is proposed to be amended (for which see below) and in the case of Article 19 of the 1994 Law, subject to a slight clarification in the drafting.
- 4.22. However, it is now proposed to amend Article 20 of the ILP Law so that a limited partner may assign his or her interest in an ILP, subject to any

conditions in the partnership agreement and unless the agreement provides otherwise. Since the present article is also subject to the partnership agreement, this amounts only to a change in the default position. It is felt that the more appropriate default position for a body corporate is that interests should be assignable (cf Article 34(1) of the Companies Law).

- 4.23. **Article 21** provides for the States to make regulations for the winding up and dissolution of solvent and insolvent incorporated limited partnerships. It is intended that these regulations will generally follow the winding up and dissolution procedures applicable to companies. The fact that ILPs have perpetual succession requires there to be a formal procedure for dissolution and winding up, with due protection for the interests of creditors.
- 4.24. There are no equivalents to Articles 22 to 25 and 27 of the 1994 Law, as all these matters will be dealt with in the regulations made under Article 21.
- 4.25. **Article 22** mirrors Article 26 of the 1994 Law.
- 4.26. **Article 23** corresponds to Article 28 of the 1994 Law. However, the bulk of that article, dealing with legal proceedings, is not needed in the ILP Law, as legal proceedings should simply be by or against the ILP as a body corporate. So Article 23 simply provides how documents may be served on an ILP.
- 4.27. **Articles 24 and 25** mirror Articles 29 and 30 respectively of the 1994 Law.
- 4.28. **Article 26** corresponds to Article 31 of the 1994 Law, but does not reflect the amendment of that article by the Financial Services Commission (Amendment No. 4) (Jersey) Law 2007. The draft Law will be amended to reflect this.
- 4.29. **Article 27** mirrors new Article 31A of the 1994 Law, and covers the position where a document is required to be delivered to the registrar, but no form has been published.
- 4.30. **Articles 28 to 31** mirror Articles 32 to 35 respectively of the 1994 Law.
- 4.31. **Article 32** mirrors Article 36 of the 1994 Law as it will be amended by the ILP Law, for which see below.
- 4.32. **Article 33** mirrors new Article 36A of the 1994 Law. This is a now standard provision preventing wrong-doers from hiding from criminal liability behind a corporate shield. It has been slightly modified to refer expressly to ILPs themselves as being bodies corporate. This is not strictly necessary, since an ILP would be included in the expression “a body corporate”, but seems appropriate in the ILP Law.
- 4.33. **Article 34** mirrors Article 37 of the 1994 Law.
- 4.34. **Article 35** corresponds to Article 38 of the 1994 Law but reflects the now standard form of the ‘Orders’ provision. However, we have noted that paragraph (2) of this Article does not reflect the deletion of the corresponding paragraph of Article 38 in the 1994 Law by the Financial Services (Amendment No. 4) (Jersey) Law 2007, and the draft will be amended

accordingly. Also, there is no equivalent of Article 38(5) of the 1994 Law in the draft ILP Law. This is because of the insertion of Article 2 into the Subordinate Legislation (Jersey) Law 1960, extending that Law automatically to all subordinate enactments unless the contrary is stated.

- 4.35. **Article 36** mirrors Article 39 of the 1994 Law.
- 4.36. **Article 37** provides for amendments to other enactments. As well as the specific amendments set out below, it also provides that references in other laws to “partnerships”, “limited partnership”, *etc.* shall include ILPs. This is to make clear that, although an ILP is a body corporate, it is still to be treated as a form of partnership.
- 4.37. **Article 38:** paragraph (1) mirrors Article 40 of the 1994 Law, and preserves the application of the customary law of partnerships to ILPs. Paragraph (2) makes clear that an ILP is not a 1994 Law limited partnership and that nothing in the 1994 Law applies to it.
- 4.38. **Article 39** deals with citation and commencement.

## **5. Amendments to other laws**

- 5.1. The amendment to the Control of Borrowing (Jersey) Law 1947 is not necessary, as ILPs are covered in the corresponding amendment in the SLP Law. This will be removed from the final draft.
- 5.2. A new Article 76B will be inserted into the Income Tax (Jersey) Law 1961, dealing with the tax treatment of ILPs. Paragraphs (3)–(8) of this article mirror Article 76A of the Income Tax Law, dealing with limited partnerships. Paragraphs (1) and (2) make clear that although an ILP is a body corporate, it shall be taxed as if it were a partnership, i.e. its business shall be treated as the business of the partners and its property shall be treated as partnership property. This means that ILPs will not fall into the 0/10 regime.
- 5.3. Various amendments will be made to the Bankruptcy (Désastre) (Jersey) Law 1990, to extend the application of that Law to ILPs. The treatment of ILPs under this Law will be essentially the same as for companies. (We note that Paragraph 3(3)(a) of the Schedule refers to deleting the word ‘and’ from Article 4(1)(d) of the Désastre Law, whereas this should refer to the word ‘or’. The final draft will be amended accordingly.) Note that the provision in relation to wrongful trading, as it applies to companies, has not been extended to ILPs. This is because the general partner of an ILP already has liability for the ILP’s debts under Article 11(7) of the draft Law, so there would be no point in imposing such liability for wrongful trading. The provision for fraudulent trading has been extended to ILPs.
- 5.4. The 1994 Law will be amended in two ways. Firstly a reference to services will be added to the provision in Article 18 providing that limited partners are liable to the extent of their unpaid contributions. This is logically necessary, as Article 10 provides that the contribution may be in the form of services. Secondly, Article 36 has been redrafted in a more modern form.

**All comments are welcomed in relation to these two draft Laws.**

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Jersey

## **SEPARATE LIMITED PARTNERSHIPS (JERSEY) LAW 200-**

### **REPORT**

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#### **Explanatory Note**

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This draft Law would create a new kind of legal entity in Jersey – a limited partnership that has separate legal personality but is not a body corporate.

This new form of partnership will be called a separate limited partnership. Together with limited partnerships registered under the Limited Partnerships (Jersey) Law 1994, incorporated limited partnerships established under the proposed Incorporated Limited Partnerships (Jersey) Law 200- and customary law partnerships, it will provide investors and business and professional undertakings with a choice of 4 methods of forming a Jersey partnership in Jersey.

Like a limited partnership and an incorporated limited partnership, it will be subject to the customary law governing partnerships except to the extent that its own statute expressly provides otherwise. In Jersey customary law, a partnership does not possess separate legal personality. This will be the feature that distinguishes a separate limited partnership from other unincorporated limited partnerships. In all other respects, the draft Law follows the 1994 Law.

The concept of an unincorporated partnership having a separate identity from that of its partners is already known in law. Scots partnerships are of that nature. In the United Kingdom, the Law Commission has recommended that English and Welsh partnerships should be given such personality – see the Law Commission and the Scottish Law Commission Report on Partnership Law, 2003 (Law Com No. 283; Scot Law Com No. 192; <http://www.lawcom.gov.uk>, <http://scotlawcom.gov.uk>.) One reason for the Law Commission's recommendation was that changing the law would bring it into line with what most people assume as a matter of course to be the case anyway.

In Jersey, the Limited Liability Partnerships (Jersey) Law 1997 already provides that a body registered under that law is unincorporated but has separate legal personality.

The present draft Law is set out in the way described below.

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*Part 1 – Preliminary*

*Article 1* defines expressions used in the draft Law.

*Article 2* explains the meanings of “solvency” and “insolvency” as used in the draft Law.

*Part 2 – Establishment of Separate Limited Partnerships*

*Article 3* provides that a separate limited partnership is a separate legal entity from its members, and that as such its capacity is not limited. It also declares that an SLP is not a body corporate.

*Article 4* provides for the registration, by the registrar of separate limited partnerships, of the declaration that must be provide by the proposed general partners on its formation.

*Article 5* provides for amendments of the declaration.

*Article 6* provides that a person may be a general partner and a limited partner, in separate capacities, at the same time.

*Article 7* provides for the name of a separate limited partnership. It must end with its description as such in full, or use either of the abbreviations “S.L.P.” and “SLP”.

*Article 8* provides for its registered office.

*Article 9* provides for its accounts and audit.

*Article 10* provides for the way in which limited partners may contribute to the partnership.

*Article 11* sets out rights and obligations of the general partners.

*Article 12* provides that the property of a separate limited partnership, (whether title is vested in the name of the SLP itself or of any of the general partners) shall be held for the benefit of the partners in accordance with the terms of the partnership agreement. If the agreement is silent, it is held for the benefit of all of the general and limited partners equally. In any event, it is so held in undivided shares.

*Article 13* sets out the circumstances in which a judgment may be enforced against the partnership’s property. The general rule in the case of a limited partnership under the 1994 Law is that judgment cannot be enforced against its property unless the judgment has been obtained against a general partner. Because a separate limited partnership has its own distinct personality, it will be possible to enforce against an SLP’s property a judgment that has been obtained against either the SLP itself or against a general partner.

*Article 14* sets out rights of limited partners.

*Article 15* deals with the sharing of limited partners in its profits.

*Article 16* relates to dealings with the partnership by its limited partners.

*Article 17* provides for the rights of limited partners as between themselves.

*Article 18* provides for the return of a limited partner’s contribution.

*Article 19* deals with a limited partner’s liability to the partnership.

*Article 20* deals with a limited partner’s liability to its creditors.

*Article 21* relates to the admission of additional limited partners.

*Article 22* relates to the assignment of a limited partner’s interest.

*Article 23* provides for the cancellation of registration of the partnership’s declaration.

*Article 24* relates to the filing of a statement of dissolution of a partnership.

*Article 25* relates to the winding up of the partnership.

*Article 26* deals with the dissolution of a partnership that ceases to have a general partner.

Under *Article 27* the Royal Court may, on the application of a partner, order the dissolution of a partnership.

Under *Article 28*, the Royal Court may order a person to comply with a requirement under the draft Law to sign, deliver or permit the inspection or copying of a document.

*Article 29* provides for the settling of accounts on the dissolution of a partnership.

*Article 30* relates to legal proceedings and the service of documents. Legal proceedings by or against a separate limited partnership may be brought in the name of the partnership itself or that of a general partner. If either the SLP or its general partners refuses without good cause to bring any proceedings, a limited partner may do so.

Under *Article 31*, it will be presumed conclusively, in favour of anyone who is not a partner, that a general partner who executes a document on its behalf is authorized to do so and that the document has been validly executed.

### *Part 3 – Miscellaneous and Final Provisions*

*Article 32* constitutes the registrar of companies as the registrar of separate limited partnerships.

*Article 33* deals with fees, charges and forms.

*Article 34* enables the registrar to accept a document where the form of the document has not been prescribed.

*Article 35* provides for the inspection and production of documents kept by the registrar.

*Article 36* enables the destruction of old records.

*Article 37* deals with the keeping of partnership records.

*Article 38* provides for the registration in the Public Registry of Acts and orders made under the Law that affect immovable property.

*Article 39* deals with offences.

*Article 40* provides that, unless expressly provided expressly or by implication in any other enactment, a separate limited partnership is not capable of committing a criminal offence.

In this respect, an SLP will therefore be in the same position as an ordinary partnership. At customary law, a partnership cannot be guilty of a criminal offence because it does not possess separate legal personality.

*Article 41* is a standard clause for the criminal liability of persons in positions of responsibility in bodies corporate and limited liability partnerships that have committed offences under the present draft Law.

*Article 42* is a standard clause dealing with parties to criminal offences under the draft Law.

*Article 43* enables the Minister for Economic Development to make Orders for the purposes of the draft Law.

*Article 44* provides for Rules of Court for those purposes.

*Article 45* amends other enactments, in the manner described in the Schedule. It also contains general referential amendments.

*Article 46* declares that the customary law of Jersey will apply to separate limited partnerships, except to the extent that it is inconsistent with the express provisions of the draft Law.

It also provides that nothing in the Limited Partnership (Jersey) Law 1994 itself applies to a separate limited partnership.

*Article 47* provides for the citation of the draft Law.

It also provides that it will come into force on a day or days to be appointed by the States, by Act.

The *Schedule* sets out amendments to other enactments.



Jersey

## **SEPARATE LIMITED PARTNERSHIPS (JERSEY) LAW 200-**

### **Arrangement**

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Jersey

## **SEPARATE LIMITED PARTNERSHIPS (JERSEY) LAW 200-**

**A LAW** to make provision for the establishment, regulation and dissolution of unincorporated limited partnerships with separate legal personality, and for connected purposes.

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<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>

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

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### **PART 1 PRELIMINARY**

#### **1 Interpretation**

In this Law unless the context otherwise requires –

“bankruptcy” includes any proceedings of a similar nature in a place outside Jersey;

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998;

“Court” means the Royal Court;

“currency” includes the euro and any other means of exchange that may be prescribed;

“declaration” means the declaration delivered to the registrar under Article 4 (including all amendments made to the declaration);

“general partner” means a person who is named as such in the declaration and, if more than one, means each general partner;

“limited partner” means a person who is named as such in the register kept under Article 8 and if, more than one, means each limited partner;

“separate limited partnership” and “SLP” mean a separate limited partnership established in accordance with this Law;

“Minister” means the Minister for Economic Development;

“partner” means a limited partner or a general partner;

“partnership agreement” means any agreement in writing of the partners as to the affairs of an SLP and the rights and obligations of the partners among themselves;

“partnership interest” means a partner’s share of the profits and losses of an SLP and the right to receive distributions of partnership assets and other benefits conferred by the partnership agreement;

“prescribed” means prescribed by Order made by the Minister;

“published” means –

- (a) in respect of a fee payable by virtue of this Law, published by the Commission in accordance with Article 15(5) of the Financial Services Commission (Jersey) Law 1998; and
- (b) in any other case, published by the Commission in a manner likely to bring it to the attention of those affected;

“registrar” means the registrar of separate limited partnerships appointed pursuant to Article 32, and the “registrar’s seal” in relation to the registrar means a seal prepared under that Article.

[Cf. Article 1, LP Law 1994; Article 1, ILP Law 200-]

## **2 Meaning of “insolvent” and “solvent”**

For the purposes of this Law, a separate limited partnership is insolvent when the general partner is unable to discharge the debts and obligations of the SLP (excluding liabilities to partners in respect of their partnership interests) as they fall due out of the assets of the SLP without recourse to the separate assets of a general partner not contributed to the SLP, and “solvent” shall be construed accordingly.

[Cf. Article 2, LP Law 1994; Article 2, ILP Law 200-]

## **PART 2**

### **ESTABLISHMENT OF SEPARATE LIMITED PARTNERSHIPS**

## **3 Separate limited partnerships**

- (1) Subject to the provisions of this Law, a separate limited partnership may be formed for any lawful purpose.
- (2) An SLP shall consist of –
  - (a) one or more persons who are general partners; and
  - (b) one or more other persons who are limited partners.
- (3) A body corporate may be a general or a limited partner.

- (4) An SLP is a legal person but not a body corporate.
- (5) An SLP's capacity as a legal person is not limited.

[Cf. Article 3(1) – (3), LP Law 1994; Article 3(1) – (2), (4) – (6), ILP Law 200-]

#### **4 Registration of declaration**

- (1) An association of persons (whether or not purporting to confer limited liability on one or more of their number) shall not be a separate limited partnership until the requirements of Article 3(2) have been satisfied and the registrar has issued a certificate under paragraph (5).
- (2) The registrar shall not issue a certificate unless there has been delivered to the registrar a declaration signed by each person who is, on the formation of the SLP, to be a general partner.
- (3) A declaration shall state –
  - (a) the name under which the SLP is to be conducted;
  - (b) the intended address of the registered office of the SLP;
  - (c) the full name and address of each general partner or, in the case of a general partner that is a body corporate, the place where it is incorporated and its proposed registered or principal office;
  - (d) the term, if any, for which the SLP is to exist or, if for unlimited duration, a statement to that effect;
  - (e) such other particulars as may be prescribed.
- (4) The registrar shall maintain a register of all declarations.
- (5) On the registration of a declaration the registrar shall issue a certificate to that effect.
- (6) The certificate shall be signed by the registrar and sealed with the registrar's seal.
- (7) The registrar may refuse to register a declaration if he or she is not satisfied that the occupier of the premises that are to be the registered office of the SLP authorizes their use as its registered office.
- (8) A certificate issued under paragraph (5) is conclusive evidence that a declaration has been delivered to the registrar.

[Cf. Article 4, LP Law 1994; Article 4, ILP Law 200-; Article 9(6), Companies (Jersey) Law 1991]

#### **5 Amendment of declaration**

- (1) If during the continuance of a separate limited partnership any change is made or occurs in any of the particulars delivered pursuant to Article 4 (other than a change in respect of the registered office of the SLP), a statement signed by a general partner, specifying the nature of the change, shall within 21 days of the date of the change be delivered to the registrar.

- (2) On the registration of a statement under this Article, the registrar shall issue a certificate to that effect.
- (3) The certificate shall be signed by the registrar and sealed with the registrar's seal.
- (4) If default is made in compliance with paragraph (1), each of the general partners is guilty of an offence and liable to a fine not exceeding level 2 on the standard scale and in the case of a continuing offence to a further fine not exceeding level 1 on the standard scale for each day on which the offence so continues.

[Cf. Article 5, LP Law 1994; Article 5, ILP Law 200-]

## **6 General and limited partners**

A person may be a general partner and a limited partner at the same time in the same separate limited partnership.

[Cf. Article 6, LP Law 1994; Article 6, ILP Law 200-]

## **7 Name of partnership**

- (1) The name of each separate limited partnership shall end with the words "Separate Limited Partnership" in full or either of the abbreviations "S.L.P." and "SLP".
- (2) The surname of a limited partner shall not appear in the name of the SLP unless it is also the surname of one of the general partners or the SLP has been carried on under that name before the admission of that partner as a limited partner.
- (3) The corporate name or a significant part of the corporate name of a limited partner shall not appear in the name of an SLP unless it is also the corporate name or a significant part of the corporate name of one of the general partners or the SLP has been carried on under that name before the admission of that corporate partner as a limited partner.
- (4) A limited partner whose surname or corporate name appears in the name of the SLP contrary to paragraph (2) or (3) is liable as a general partner to any creditor of the SLP who has extended credit without actual knowledge that the limited partner is not a general partner.
- (5) The registrar may refuse to register a declaration where the name to be registered is in the registrar's opinion in any way misleading or otherwise undesirable.

[Cf. Article 7, LP Law 1994; Article 7, ILP Law 200-]

## **8 Registered office**

- (1) A separate limited partnership shall have a registered office in Jersey.

- (2) An SLP does not comply with the requirement in paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being their use for that purpose.
  - (3) An SLP may change the address of its registered office from time to time by giving notice to the registrar.
  - (4) The change shall take effect on the notice being registered by the registrar, but until the end of the period of 14 days beginning on the date on which it is registered, a person may validly serve any document on the SLP at its previous registered office.
  - (5) The registrar may refuse to register the notice if he or she is not satisfied that the occupier of the premises that are to be the registered office of the SLP authorizes their use as its registered office.
  - (6) An SLP shall keep at its registered office –
    - (a) a register showing in alphabetical order for each limited partner –
      - (i) the full name and address of each limited partner who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and its registered or principal office,
      - (ii) where the participation by limited partners is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held;
    - (b) a copy of the declaration of SLP and each amendment made to it;
    - (c) a copy of the partnership agreement and each amendment made to it;
    - (d) a statement of the amount of any contributions agreed to be made by limited partners and the time at which, or events on the happening of which, the contributions are to be made;
    - (e) a statement of the amount of money and nature and value of any other property or services contributed by each limited partner and the dates thereof;
    - (f) a statement of the amount of contributions returned to limited partners and the dates thereof;
    - (g) such other particulars as may be prescribed.
  - (7) The records kept under paragraph (6) shall be –
    - (a) *prima facie* evidence of the particulars that are by that paragraph directed to be contained therein;
    - (b) amended within 21 days of any change in the particulars contained therein;
    - (c) available for inspection and copying without charge during ordinary business hours at the request of a partner.
  - (8) The registrar may require an SLP to produce its register during normal working hours to the registrar at its registered office, for inspection by the registrar.
-

- (9) A requirement under paragraph (8) shall be made by a notice in writing served on the SLP. The notice shall specify a date (being not sooner than 5 days after it is served) and a time at which the partnership is to produce the register.
- (10) The Minister may prescribe information that –
- (a) an applicant for the formation of an SLP; or
  - (b) an SLP,
- must provide to the registrar for the purpose of showing that an occupier of premises authorizes or continues to authorize the use of the premises as its registered office.
- (11) An Order under paragraph (10) may contain such other provisions as are reasonably necessary for or incidental to that purpose.
- (12) If default is made in compliance with any requirement made by or under this Article, each of the general partners is guilty of an offence and liable to a fine not exceeding level 2 on the standard scale and in the case of a continuing offence to a further fine not exceeding level 1 on the standard scale for each day on which the offence so continues.

[Cf. Article 8, LP Law 1994; Article 8, ILP Law 200-]

## **9 Accounts and audit**

- (1) A separate limited partnership shall keep accounting records that are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy at any time the financial position of the SLP.
- (2) Unless the partnership agreement otherwise provides, it shall not be necessary for an SLP to appoint an auditor or have its accounts audited.
- (3) If default is made in compliance with this Article, each of the general partners is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale.

[Cf. Article 9, LP Law 1994; Article 9, ILP Law 200-]

## **10 Contribution of limited partner**

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

[Cf. Article 10, LP Law 1994; Article 10, ILP Law 200-]

## **11 Rights and obligations of general partner**

- (1) Subject to paragraph (2), a general partner in a separate limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners.
- (2) Without written consent or ratification by all the limited partners, a general partner has no authority –

- (a) to do an act which makes it impossible to carry on the activities of the SLP; or
  - (b) to possess SLP property, or dispose of any rights in SLP property, for other than a partnership purpose;
  - (c) to admit a person as a general partner or to admit a person as a limited partner, unless the right to do so is given in the partnership agreement.
- (3) Any debt or obligation incurred by a general partner in the conduct of the activities of an SLP shall be a debt or obligation of the SLP.

[Cf. Article 11, LP Law 1994; Article 11, ILP Law 200-]

## **12 Partnership property**

- (1) The property of a separate limited partnership shall be held for the benefit of the partners in accordance with the terms of the partnership agreement or, if the partnership agreement is silent, for the benefit of all of the general partners and limited partners in equal shares.
- (2) The property of the SLP shall be so held in undivided shares, and –
  - (a) as between the partners, no partner shall be entitled individually to exercise proprietary rights in respect of the property; and
  - (b) in relation to third parties, the partners shall be collectively entitled to the property.
- (3) This Article applies whether title to the property is vested in the name of the SLP itself or of any one or more of the general partners.

## **13 Enforcement of judgments against property of separate limited partnership**

- (1) No judgment shall be enforced against any property of a separate limited partnership unless such judgment has been granted against the SLP or against a general partner in his or her capacity as a general partner of that SLP.
- (2) Creditors of a general partner or a limited partner, in that partner's capacity other than as a general partner or a limited partner of the SLP, shall have no claim against the property of that SLP.

## **14 Rights of limited partner**

- (1) A limited partner has the same right as a general partner –
  - (a) during business hours, to inspect and make copies of or take extracts from the separate limited partnership records at all times;
  - (b) to be given, on demand, true and full information of all things affecting the SLP and to be given a formal account of partnership affairs whenever circumstances render it just and reasonable.
- (2) A limited partner shall not be entitled to dissolve the SLP by notice.
- (3) Subject to any provision, express or implied, of the partnership agreement to the contrary, an SLP shall not be dissolved by the death, legal

incapacity, bankruptcy, retirement or withdrawal from the SLP of a limited partner who is an individual, or in the case of a body corporate, its dissolution, bankruptcy or withdrawal from the SLP.

[Cf. Article 13(1), LP Law 1994; Article 12, ILP Law 200-]

## 15 Share of profits

- (1) A limited partner has, subject to this Law and the partnership agreement, the right to a share of the profits of the separate limited partnership.
- (2) It is immaterial whether or not the share of the profits is distributed to the limited partner.
- (3) A limited partner may receive from the SLP by way of distribution the share of the profits stipulated for in the partnership agreement only if, at the time when and immediately after payment is made, the SLP is solvent.
- (4) For a period of 6 months from the date of receipt by a limited partner of any payment representing a share of the profits of the SLP in circumstances where the requirements of paragraph (3) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such share of the profits is necessary to discharge a debt or obligation of the SLP incurred during the period that the share of the profits represented an asset of the SLP.

[Cf. Article 14, LP Law 1994; Article 13, ILP Law 200-]

## 16 Dealings by limited partner with partnership

- (1) A limited partner may lend money to, borrow money from and enter into transactions with the separate limited partnership.
- (2) Except where the limited partner is also a general partner, a limited partner having, with respect to anything done under paragraph (1), a claim against the assets of the SLP shall rank as a creditor of the SLP in respect of such claim.
- (3) For the purposes of this Article, a claim described in paragraph (2) does not include a claim for a return of capital contributions.

[Cf. Article 5, LP Law 1994; Article 14, ILP Law 200-]

## 17 Limited partners' rights as between themselves

- (1) Subject to paragraph (2), limited partners, in relation to one another, shall rank –
  - (a) *pari passu* in respect of the return of their contributions; and
  - (b) *pro rata* to those contributions in respect of profits.
- (2) Where there is more than one limited partner, the partnership agreement may provide that one or more of the limited partners is to have greater rights than the other limited partners as to –

- (a) the return of contributions;
- (b) profits; or
- (c) any other matter.

[Cf. Article 16, LP Law 1994; Article 15, ILP Law 200-]

## **18 Return of limited partner's contribution**

- (1) A limited partner shall not, on dissolution or otherwise, receive out of the capital of the separate limited partnership a payment representing a return of any part of the limited partner's contribution to the partnership unless at the time of and immediately following such payment the SLP is solvent.
- (2) For a period of 6 months from the date of receipt by a limited partner of any payment representing a return of contribution or part thereof received by such limited partner in circumstances where the requirements of paragraph (1) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the SLP incurred during the period that the contribution represented an asset of the SLP.
- (3) Except –
  - (a) as provided in paragraph (2); or
  - (b) in the case of fraud,
 a limited partner shall not be liable to repay any payment representing a return of the limited partner's contribution or of part of his or her contribution.
- (4) Subject to paragraphs (1) and (2), a limited partner may demand payment representing the return of all or part of his or her contribution –
  - (a) on the dissolution of the SLP;
  - (b) at the time specified in the partnership agreement for its return; or
  - (c) after the limited partner has given 6 months' notice in writing to all other partners, if no time is specified in the partnership agreement either for the return of the contribution or for the dissolution of the SLP.
- (5) A limited partner has, notwithstanding the nature of his or her contribution, only the right to demand and receive money in return for it, unless –
  - (a) there is a statement to the contrary in the partnership agreement; or
  - (b) all the partners consent to some other manner of returning the contribution.
- (6) In this Article "payment" includes the release of any obligation forming part of the capital contribution, and any liability to make repayments pursuant to paragraph (2) shall be construed accordingly.

[Cf. Article 17, LP Law 1994; Article 16, ILP Law 200-]

**19 Limited partner's liability to partnership**

A limited partner is liable to the separate limited partnership for the difference, if any, between the value of money or other property or services contributed by the limited partner to the SLP and the value of money or other property or services specified in the records kept under Article 8(6) to be contributed by the limited partner to the SLP.

[Cf. Article 18, LP Law 1994; Article 17, ILP Law 200-]

**20 Limited partner's liability to creditors**

- (1) Except as provided in Article 19 or 30(2), or in any other provision in this Law, a limited partner is not liable for the debts or obligations of the separate limited partnership.
- (2) A limited partner is not liable as a general partner unless he or she participates in the management of the SLP.
- (3) Subject to paragraph (4), if a limited partner participates in the management of the SLP in its dealings with persons who are not partners, that limited partner shall be liable in the event of the insolvency of the SLP for all debts and obligations of the SLP incurred during the period that he or she participated in the management of the SLP as though he or she were for that period a general partner.
- (4) A limited partner shall be liable, under paragraph (3), only to a person who transacts with the SLP with actual knowledge of the participation of the limited partner in the management of the SLP and who then reasonably believed the limited partner to be a general partner.
- (5) A limited partner does not participate in the management of an SLP within the meaning of this Article by doing one or more of the following –
  - (a) being a contractor for or an agent or employee of the SLP or of a general partner or acting as a director, officer or shareholder of a corporate general partner;
  - (b) consulting with and advising a general partner with respect to the activities of the SLP;
  - (c) investigating, reviewing, approving or being advised as to the accounts or affairs of the SLP or exercising any right conferred by this Law;
  - (d) acting as surety or guarantor for the SLP either generally or in respect of specific obligations;
  - (e) approving or disapproving an amendment to the partnership agreement; or
  - (f) voting on, or otherwise signifying approval or disapproval of, one or more of the following –
    - (i) the dissolution and winding up of the SLP,
    - (ii) the purchase, sale, exchange, lease, pledge, hypothecation, creation of a security interest, or other dealing in any asset by or of the SLP,

- (iii) the creation or renewal of an obligation by the SLP,
  - (iv) a change in the nature of the activities of the SLP,
  - (v) the admission, removal or withdrawal of a general or a limited partner and the continuation of the SLP thereafter, or
  - (vi) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners;
- (g) bringing an action on behalf of the SLP pursuant to Article 30(3).
- (6) Paragraph (5) shall not import any implication that the possession or exercise of any other power by a limited partner will necessarily constitute the participation by such limited partner in the management of the SLP.

[Cf. Article 19, LP Law 1994; Article 18, ILP Law 200-]

## **21 Admission of additional limited partners**

An additional limited partner shall not be admitted to a separate limited partnership except in accordance with the partnership agreement and by entry in the register under Article 8(6)(a).

[Cf. Article 20, LP Law 1994; Article 19, ILP Law 200-]

## **22 Assignments**

- (1) A limited partner shall not assign his or her interest, in whole or in part, in the separate limited partnership unless –
  - (a) all the limited partners and all the general partners consent or the partnership agreement permits it; and
  - (b) the assignment is made in accordance with the terms of the consent or the partnership agreement, as the case may be.
- (2) An assignee of the interest, in whole or in part, of a limited partner does not become a limited partner in the SLP until the assignee's ownership of the assigned interest is entered in the register referred to in Article 8(6)(a), and until so entered he or she has none of the rights of a limited partner exercisable against the partnership or against any of the partners other than the assignor.
- (3) Subject to paragraph (4), on becoming a limited partner, an assignee acquires the rights and powers and is subject to all the restrictions and liabilities that his or her assignor had in respect of the assigned interest immediately before the assignment.
- (4) On becoming a limited partner an assignee shall not assume any liability of the assignor arising under Article 15(4), 18(2) or 20(3) and, notwithstanding any term of the partnership agreement or any other agreement to the contrary, no such assignment shall relieve the assignor of any liability under those paragraphs.

[Cf. Article 21, LP Law 1994; Article 20, ILP Law 200-]

### **23 Cancellation of registration**

The registrar shall cancel the registration of the declaration of a separate limited partnership on the occurrence of any of the following events –

- (a) on the delivery to the registrar of a request for its cancellation, signed by each person who is, or is on the formation of the SLP to be, a general partner;
- (b) on the delivery to the registrar under Article 24 of a statement of dissolution of the SLP;
- (c) on the delivery to the registrar under Article 26 of a statement of dissolution of the SLP;
- (d) on receiving under Article 27 an Act of the Court ordering the dissolution of the SLP.

[Cf. Article 21A, LP Law 1994]

### **24 Statement of dissolution**

- (1) Except as provided in Articles 26 and 27, a separate limited partnership shall not be dissolved by an act of the partners until a statement of dissolution signed by a general partner has been delivered by the general partner to the registrar.
- (2) If default is made in compliance with this Article each of the general partners is guilty of an offence and is liable to a fine not exceeding level 2 on the standard scale.

[Cf. Article 22, LP Law 1994]

### **25 Winding up of separate limited partnership**

In the event of the dissolution of a separate limited partnership its affairs shall be wound up by the general partners unless the activities of the SLP are taken over and continued in accordance with Article 26(2) or unless the Court otherwise directs under Article 27(2).

[Cf. Article 23, LP Law 1994]

### **26 Dissolution of partnership on death etc., of general partner**

- (1) Notwithstanding any provision, express or implied, of the partnership agreement to the contrary, but subject to paragraph (2) –
  - (a) where the sole or last remaining general partner is an individual, the general partner's death, legal incapacity, bankruptcy, retirement or withdrawal from the separate limited partnership; or
  - (b) where the sole or last remaining general partner is a body corporate, its dissolution, bankruptcy or withdrawal from the SLP,
 shall cause the immediate dissolution of the SLP which shall forthwith be wound up –
  - (i) in accordance with the partnership agreement; or

- (ii) on the application of a limited partner or a creditor of the SLP, in accordance with the directions of the Court.
- (2) An SLP shall not be required to be wound up under paragraph (1) if, within 90 days of the dissolution, the limited partners, either unanimously or as otherwise provided for in the partnership agreement, elect one or more general partners, in which event the SLP shall be deemed not to have been dissolved and the activities of the SLP may be taken over and continued as provided for in the partnership agreement or a subsequent agreement.
- (3) If an SLP is dissolved under paragraph (1), and the activities of the SLP are not taken over and continued in accordance with paragraph (2), a statement of dissolution signed by a limited partner shall be delivered by him or her to the registrar.

[Cf. Article 24, LP Law 1994]

## **27 Power of Court to order dissolution**

- (1) The Court may, on the application of a partner, order the dissolution of a separate limited partnership if it is satisfied that –
  - (a) the SLP is being conducted in a manner calculated or likely to affect prejudicially the carrying out of the activities of the SLP;
  - (b) the SLP is being conducted in a manner oppressive to one or more of the limited partners; or
  - (c) circumstances have arisen that render it just and equitable that the SLP be dissolved.
- (2) Where an order is made under paragraph (1) the Court may give such directions as it thinks fit as to the winding up of the SLP.
- (3) When an SLP has been dissolved under this Article the partner making the application shall cause the relevant Act of the Court to be delivered to the registrar within 21 days after the making of the order.

[Cf. Article 25, LP Law 1994-]

## **28 Order for compliance**

- (1) Where a person who is required by this Law to sign, deliver or permit inspection or copying of a document refuses to do so, a person who is aggrieved by the refusal may apply to the Court for an order directing the person to comply with the provisions of this Law and upon such application the Court may make such order or any other order it considers appropriate in the circumstances.
- (2) An application may be made under paragraph (1) notwithstanding the imposition of a penalty in respect of the refusal and in addition to any other rights the applicant may have at law.

[Cf. Article 26, LP Law 1994; Article 22, ILP Law 200-]

## 29 Settling accounts on dissolution

Where accounts are settled after the dissolution of a separate limited partnership, the liabilities of the SLP to creditors, except to –

- (a) limited partners on account of their contributions or profits; and
- (b) general partners,

shall be paid first and then, subject to the partnership agreement or to a subsequent agreement, the other liabilities of the SLP shall be paid in the following order –

- (i) to general partners other than for capital and profits;
- (ii) to limited partners in respect of the capital of their contributions;
- (iii) to limited partners in respect of their share of the profits on their contributions;
- (iv) to general partners in respect of capital;
- (v) to general partners in respect of profits.

[Cf. Article 27, LP Law 1994]

## 30 Legal proceedings and service of documents

- (1) Except as provided in this Law, legal proceedings by or against a separate limited partnership shall be instituted by or against the SLP or by or against any one or more of the general partners only, and no limited partner shall be a party to or named in such proceedings.
- (2) An SLP or general partner or, with the leave of the Court, any other person shall have the right to join or otherwise institute proceedings against one or more of the limited partners who may be liable to the SLP pursuant to –
  - (a) Article 15(4);
  - (b) Article 18(2);
  - (c) Article 19; or
  - (d) Article 20(3).
- (3) A limited partner may bring an action on behalf of an SLP if the SLP or any one or more of the general partners with authority to do so have, without good cause, refused to institute such proceedings.
- (4) For the purposes of this Law, service of a document on an SLP may be effected by sending it by post to or delivering it to the registered office of the SLP.
- (5) For the purposes of this Law, service of a document on a general partner in respect of an SLP may be effected by –
  - (a) delivering it to the general partner; or
  - (b) sending it by post or delivering it to the registered office of the SLP.

[Cf. Article 28, LP Law 1994; Article 23, ILP Law 200-]

**31 Authority to sign**

Where a general partner executes a document on behalf of the separate limited partnership, it shall be conclusively presumed in favour of any person who is not a partner that –

- (a) the general partner has the authority under which the general partner purports to act; and
- (b) the executed document has been validly executed.

[Cf. Article 29, LP Law 1994; Article 24, ILP Law 200-]

**PART 3****MISCELLANEOUS AND FINAL PROVISIONS****32 Appointment of registrar, etc.**

- (1) The registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991 shall be the registrar of separate limited partnerships.
- (2) The Commission may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the establishment of SLPs.
- (3) Any functions of the registrar under this Law may, to the extent authorized by the registrar, be exercised by any officer on the staff of the Commission.

[Cf. Article 30, LP Law 1994; Article 25, ILP Law 200-]

**33 Fees, charges and forms**

- (1) The Commission may require the payment to it of published fees in respect of the performance by the registrar of his or her functions under this Law or a charge for the provision by the registrar of any service, advice, or assistance.
- (2) Where a fee mentioned in paragraph (1) is payable in respect of the performance of a function by the registrar, the registrar need take no action until the fee is paid.
- (3) Where the fee is payable on the receipt by the registrar of a document required to be delivered to the registrar, the registrar shall be taken not to have received the document until the fee is paid.
- (4) The Commission may publish forms and other documents to be used for any of the purposes of this Law together with details of the manner in which any such document to be delivered to the registrar is to be authenticated.

[Cf. Article 31, LP Law 1994; Article 26, ILP Law 200-]

### **34 Form of documents to be delivered to registrar**

Where any Article of this Law requires a document to be delivered to the registrar, but the form of the document has not been published, it shall be sufficient compliance with that requirement if –

- (a) the document is delivered in a form that is acceptable to the registrar; or
- (b) any information to which the requirement relates is delivered in material, other than a document, that is acceptable to the registrar,

and the document or material, as the case may be, is accompanied by the published fee, if any.

[Cf. Article 31A, LP Law 1994; Article 27, ILP Law 200-; Article 200, Companies (Jersey) Law 1991]

### **35 Inspection and production of documents kept by registrar**

- (1) Subject to the provisions of this Article, a person may –
  - (a) inspect a document delivered to the registrar under this Law and kept by the registrar or, if the registrar thinks fit, a copy thereof;
  - (b) require a certificate of the registration of a declaration or copy, certified or otherwise, of any other document or part of any other document referred to in sub-paragraph (a),

and a certificate given under sub-paragraph (b) shall be signed by the registrar and sealed with the registrar's seal.

- (2) A copy of or extract from a record kept by the registrar, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to the registrar under this Law, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.

[Cf. Article 32, LP Law 1994; Article 28, ILP Law 200-]

### **36 Destruction of old records**

- (1) Where a separate limited partnership has been dissolved, the registrar may, at any time after 10 years from the date of the dissolution, destroy any records relating to that SLP in the registrar's possession or under the registrar's control.
- (2) After 10 years from the dissolution of an SLP, no responsibility rests on a general partner or a person to whom custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

[Cf. Article 33, LP Law 1994; Article 29, ILP Law 200-]

**37 Form of separate limited partnership's records**

- (1) The records that a separate limited partnership is required by this Law to keep may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.
- (2) An SLP shall take reasonable precautions –
  - (a) to prevent loss or destruction of;
  - (b) to prevent falsification of entries in; and
  - (c) to facilitate detection and correction of inaccuracies in,
 the records required by this Law to be kept, and if default is made in compliance with this paragraph each of the general partners is guilty of an offence and liable to a fine not exceeding level 2 on the standard scale.

[Cf. Article 34, LP Law 1994; Article 30, ILP Law 200-]

**38 Registration in the Public Registry**

The Judicial Greffier shall register in the Public Registry all Acts and orders affecting immovable property made under this Law.

[Cf. Article 35, LP Law 1994; Article 31, ILP Law 200-]

**39 Offences**

A person who, in or in connection with any document, material, evidence or information –

- (a) that is required to be kept under Article 8(6); or
- (b) that is required to be delivered to the registrar under this Law,

knowingly or recklessly makes a statement that is false or misleading in any material particular shall be guilty of an offence and liable to imprisonment for 2 years and a fine.

[Cf. Article 36(1), LP Law 1994; Article 32, ILP Law 200-]

**40 Criminal liability for offences by separate limited partnerships**

Except as is provided by or under any other enactment (whether expressly or by implication), a separate limited partnership is not capable of committing a criminal offence.

**41 Criminal liability for offences under this Law by other bodies**

- (1) Where an offence under this Law committed by a limited liability partnership or a body corporate is proved to have been committed with

the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) a person who is a partner of that partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as that partnership or body corporate to the penalty provided for that offence.

- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

[Cf. Article 36A, LP Law 1994; Article 33, ILP Law 200-]

#### **42 Aiders and abettors**

Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence punishable by this Law shall be liable to be dealt with, tried and punished as a principal offender.

[Cf. Article 37, LP Law 1994; Article 34, ILP Law 200-]

#### **43 Orders**

- (1) The Minister may by Order make provision for the purpose of carrying this Law into effect and in particular, but without prejudice to the generality of the foregoing, for prescribing any matter that is to be prescribed under this Law.
- (2) In prescribing fees for the purposes of this Law, the Minister may take into consideration such matters as he or she thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Minister and the Commission in discharging their respective functions under this Law.
- (3) An Order made under this Law may contain such incidental provisions as the Minister may consider to be necessary or expedient.
- (4) The Minister shall consult the Commission before making any Order under this Law.

[Cf. Article 38, LP Law 1994; Article 35, ILP Law 200-]

#### **44 Rules of Court**

The power to make Rules of Court under the Royal Court (Jersey) Law 1948 shall include a power to make Rules for the purposes of this Law.

[Cf. Article 39, LP Law 1994; Article 36, ILP Law 200-]

**45 Amendments to other enactments**

- (1) The enactments specified in the Schedule shall be amended in the manner set out in the Schedule.
- (2) In every other enactment, unless the context otherwise requires –
  - (a) every reference to a partnership shall be construed as including a reference to a separate limited partnership, and in the context of any such reference “partner” and “member of a partnership” shall be construed accordingly; and
  - (b) every reference to a limited partnership shall be construed as including a reference to a separate limited partnership, and in the context of any such reference “partner”, “member of a partnership”, “general partner”, “the general partner” and “limited partner” shall be construed accordingly.

[Cf. Article 37, ILP Law 200-]

**46 Relationship to other law**

- (1) The rules of customary law applicable to partnerships (*contrats de société*) shall apply to separate limited partnerships except in so far as they are inconsistent with the express provisions of this Law.
- (2) Nothing in the Limited Partnership (Jersey) Law 1994 shall apply to a separate limited partnership.

[Cf. Article 40, LP Law 1994; Article 38, ILP Law 200-]

**47 Citation and commencement**

- (1) This Law may be cited as the Separate Limited Partnerships (Jersey) Law 200-.
- (2) This Law shall come into force on such day as the States may by Act appoint.
- (3) Different days may be so appointed for different provisions or different purposes of this Law.

[Cf. Article 39, ILP Law 200-]

## SCHEDULE

(Article 45(1))

### AMENDMENTS TO OTHER ENACTMENTS

#### 1 **Registration of Business Names (Jersey) Law 1956**

In Article 1(1), for the definition “limited partnership” there shall be substituted the following definition –

- “ ‘limited partnership’ means any of the following partnerships –
- (a) a limited partnership as defined in Article 1 of the Limited Partnerships (Jersey) Law 1994;
  - (b) a separate limited partnership as defined in Article 1 of the Separate Limited Partnerships (Jersey) Law 200-;
  - (c) an incorporated limited partnership as defined in Article 1 of the Incorporated Limited Partnerships (Jersey) Law 200-;”.

#### 2 **Control of Borrowing (Jersey) Law 1947**

In Article 1(1), for the definitions “limited partnership” and “partnership agreement” there shall be substituted the following definition –

- “ ‘limited partnership’ means any of the following partnerships –
- (a) a limited partnership as defined in Article 1 of the Limited Partnerships (Jersey) Law 1994;
  - (b) a separate limited partnership as defined in Article 1 of the Separate Limited Partnerships (Jersey) Law 200-;
  - (c) an incorporated limited partnership as defined in Article 1 of the Incorporated Limited Partnerships (Jersey) Law 200-;”.

In Article 2(10)(b) after the words “the Limited Partnerships (Jersey) Law 1994” there shall be inserted the words “the Separate Limited Partnerships (Jersey) Law 200- or the Incorporated Limited Partnerships (Jersey) Law 200-;”.

#### 3 **Collective Investment Funds (Jersey) Law 1988**

In Article 1(1), after the definition “holding company” there shall be inserted the following definition –

- “ ‘limited partnership’ means any of the following partnerships –
- (a) a limited partnership as defined in Article 1 of the Limited Partnerships (Jersey) Law 1994;
  - (b) a separate limited partnership as defined in Article 1 of the Separate Limited Partnerships (Jersey) Law 200-;
  - (c) an incorporated limited partnership as defined in Article 1 of the Incorporated Limited Partnerships (Jersey) Law 200-;”.

In Article 5(2), the words “established in accordance with the Limited Partnerships (Jersey) Law 1994” shall be deleted.

In Article 8(1)(c)(i), the words “established in accordance with the Limited Partnerships (Jersey) Law 1994” shall be deleted.





Jersey

## **INCORPORATED LIMITED PARTNERSHIPS (JERSEY) LAW 200-**

### **REPORT**

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#### **Explanatory Note**

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This draft Law enables the registration in Jersey of limited partnerships with separate corporate personality. It is intended to complement the Limited Partnerships (Jersey) Law 1994, which already enables the registration in Jersey of unincorporated limited partnerships.

The draft Law is arranged in the following way –

##### *Part 1 – Preliminary*

*Article 1* defines expressions that are used in the draft Law.

*Article 2* defines the expressions “solvent” and “insolvent”.

##### *Part 2 – Establishment of Incorporated Limited Partnerships*

*Article 3* allows an incorporated limited partnership to be formed, in accordance with the draft Law, for any lawful purpose. It must consist of one or more general partners and one or more other persons who are limited partners. On registration under the Law, it will be a body corporate, i.e. having separate legal personality from that of the partners, and perpetual succession. It will also have unlimited capacity – the same legal capacity as a natural person of full age.

*Article 4* allows an association of persons to apply for the formation of an incorporated limited partnership by delivering to the registrar a declaration verifying the formation of the partnership. (The registrar of companies, who is already the registrar of unincorporated limited partnerships would also become the registrar for incorporated partnerships – see Article 24, below.)

If the Law has been complied with, the registrar must register the association and issue a certificate to that effect. On the issue of the certificate, the partnership becomes a body corporate. The certificate is conclusive proof that it has that status, and that the requirements of the Law in respect of registration have been complied with.

The registrar may refuse to register the association if not satisfied that the occupier of the premises that are to be its registered office in Jersey authorizes their use for that purpose.

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*Article 5* provides for the amendment of the certificate in the event of a change of circumstances.

*Article 6* provides that (as long as at least two separate persons are partners) one person may be a partner in two separate capacities, i.e. both as a general partner and as a limited partner.

*Article 7* stipulates that the name of an incorporated limited partnership must end with the words “Incorporated Limited Partnership”, or with either of the abbreviations “Inc. L. P.” and “Inc LP”.

*Article 8* requires an incorporated limited partnership to maintain a *bona fide* registered office in Jersey, and to keep at that office a register of its limited partners and other information in respect of the partnership. Any partner is entitled to inspect and copy the information during ordinary business hours. The registrar is also entitled to inspect the register at the registered office, on notice, during normal working hours.

The registrar may refuse to register a change of registered office if he or she is not satisfied that the occupier of the premises that are to become the registered office authorizes their use for that purpose.

*Article 9* relates to the keeping of accounts, and their audit.

*Article 10* permits a limited partner to contribute to the partnership in money of any currency, or by providing property or services.

*Article 11* sets out the rights and obligations of general partners.

*Article 12* relates to the rights of a limited partner to information.

*Article 13* deals with the right of a limited partner to share in profits.

*Article 14* relates to dealings by a limited partner with the partnership.

*Article 15* governs limited partners’ rights as between themselves.

*Article 16* deals with the return of a limited partner’s contribution.

*Article 17* relates to a limited partner’s liability to the partnership.

*Article 18* relates to a limited partner’s liability to creditors.

*Article 19* provides for the admission of additional limited partners.

*Article 20* relates to the assignment of a limited partner’s interest in the partnership.

*Article 21* enables the States to make Regulations for the winding up and dissolution of solvent and insolvent incorporated limited partnerships.

*Article 22* contains provisions relating to the jurisdiction of the Royal Court to order a person to comply with a requirement under the draft Law to sign or deliver or to allow the inspection or copying of a document.

*Article 23* deals with the service of documents.

*Article 24* relates to the authority of a general partner to sign a document on behalf of an incorporated limited partnership.

### *Part 3 – Miscellaneous and Final Provisions*

*Article 25* provides that the registrar of companies shall be the registrar of incorporated limited partnerships. (The registrar of companies already undertakes that function in respect of unincorporated limited partnerships).

It also provides for the registrar’s seal, and enables the registrar to authorize any officer of the Jersey Financial Services Commission to exercise any of the registrar’s functions.

*Article 26* deals with fees and forms.

*Article 27* relates to the ways in which documents and other information may be delivered to the registrar where no form is prescribed for that purpose by a Ministerial Order.

*Article 28* relates to the inspection and production of documents kept by the registrar.

*Article 29* is concerned with the destruction of old records.

*Article 30* relates to the form and keeping of partnership records.

*Article 31* provides for the registration in the Public Registry of Acts and orders affecting immovable property.

*Article 32* relates to offences.

*Article 33* sets out the circumstances in which a person is liable for an offence committed by an incorporated limited partnership, by any other body corporate or by a limited liability partnership.

*Article 34* relates to parties to offences.

*Article 35* provides for the making of Ministerial Orders.

*Article 36* is concerned with rules of Court.

*Article 37* makes consequential amendments to other enactments. The amendments are set out in the Schedule to the draft Law.

*Article 38* contains in respect of incorporated limited partnerships the same saving as the 1994 Law in respect of the application of the rules of the customary law relating to *contrats de société*.

It also provides that nothing in the Limited Partnership (Jersey) Law 1994 itself applies to an incorporated limited partnership.

*Article 39* provides for the citation of the draft Law, and for it to come into force on a day or days to be appointed by the States, by Act.



Jersey

## INCORPORATED LIMITED PARTNERSHIPS (JERSEY) LAW 200-

### Arrangement

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Jersey

## **INCORPORATED LIMITED PARTNERSHIPS (JERSEY) LAW 200-**

**A LAW** to provide for the establishment, regulation and dissolution of limited partnerships with corporate personality; and for connected purposes.

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<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>

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

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### **PART 1 PRELIMINARY**

#### **1 Interpretation**

In this Law unless the context otherwise requires –

“bankruptcy” includes any proceedings of a similar nature in a place outside Jersey;

“certificate” means the certificate of registration of a declaration issued by the registrar under Article 4 (including all amendments made to the certificate);

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998;

“currency” includes the euro and any other means of exchange that may be prescribed;

“declaration” means the declaration delivered to the registrar under Article 4 (including all amendments made to the declaration);

“general partner” means a person who is named as such in the declaration and, if more than one, each general partner;

“incorporated limited partnership” means an incorporated limited partnership established in accordance with this Law;

“limited partner” means a person who is named as such in the register kept under Article 8 and, if more than one, each limited partner;

“Minister” means the Minister for Economic Development;

“partner” means a limited partner or a general partner;

“partnership agreement” means any agreement in writing of the partners as to the affairs of an incorporated limited partnership and the rights and obligations of the partners among themselves;

“partnership interest” means a partner’s share of the profits and losses of an incorporated limited partnership and the right to receive distributions of partnership assets and other benefits conferred by the partnership agreement;

“prescribed” means prescribed by an Order made by the Minister;

“registrar” means the registrar of incorporated limited partnerships appointed pursuant to Article 24 and “registrar’s seal” in relation to the registrar means a seal prepared under that Article.

[Cf. Article 1, LP Law 1994; Article 1, SLP Law 200-]

## **2 Meaning of “insolvent” and “solvent”**

For the purposes of this Law, an incorporated limited partnership is insolvent when it is unable to discharge its debts and obligations (excluding liabilities to partners in respect of their partnership interests) as they fall due; and “solvent” shall be construed accordingly.

[Cf. Article 2, LP Law 1994; Article 2, SLP Law 200-]

## **PART 2**

### **ESTABLISHMENT OF INCORPORATED LIMITED PARTNERSHIPS**

## **3 Incorporated limited partnership**

- (1) Subject to the provisions of this Law, an incorporated limited partnership may be formed under this Law for any lawful purpose.
- (2) An incorporated limited partnership is a body corporate, having legal personality that is separate from that of its members.
- (3) An incorporated limited partnership has perpetual succession, and cannot be dissolved otherwise than by or under this Law or another enactment.
- (4) An incorporated limited partnership has unlimited capacity.
- (5) An incorporated limited partnership shall consist of –
  - (a) one or more persons who are general partners; and
  - (b) one or more other persons who are limited partners.
- (6) A body corporate may be a general partner or a limited partner.

[Cf. Article 3(1) – (3), LP Law 1994; Article 3, SLP Law 200-]

#### 4 Registration of declaration

- (1) An association of persons (whether or not purporting to confer limited liability on one or more of their number) shall not be an incorporated limited partnership until the requirements of Article 3(5) have been satisfied and the registrar has issued a certificate under paragraph (5) of this Article.
  - (2) The registrar shall not issue a certificate unless there has been delivered to the registrar a declaration signed by each person who is, on the formation of the incorporated limited partnership, to be a general partner.
  - (3) A declaration shall state –
    - (a) the name under which the incorporated limited partnership is to be conducted;
    - (b) the intended address of the registered office of the partnership;
    - (c) the full name and address of each general partner that is an individual or, in the case of a general partner who is a body corporate, the place where it is incorporated and its registered or principal office;
    - (d) a statement that a partnership agreement has been executed by the partners; and
    - (e) such other particulars as may be prescribed.
  - (4) The registrar shall maintain a register of all declarations.
  - (5) On the registration of a declaration, the registrar shall issue a certificate to that effect.
  - (6) The certificate shall be signed by the registrar and sealed with the registrar's seal.
  - (7) The incorporated limited partnership comes into being on the issue of the certificate.
  - (8) The registrar may refuse to register a declaration if he or she is not satisfied that the occupier of the premises that are to be the registered office of the incorporated limited partnership authorizes their use as its registered office.
  - (9) A certificate issued under paragraph (5) is conclusive evidence of the following matters –
    - (a) that a declaration has been delivered to the registrar;
    - (b) that the incorporated limited partnership is incorporated under this Law;
    - (c) that the requirements of this Law have been complied with in respect of –
      - (i) registration,
      - (ii) all matters precedent to registration, and
      - (iii) all matters incidental to registration,in respect of the partnership.
-

[Cf. Article 4, LP Law 1994; Article 1, SLP Law 200-; Article 9(6), Companies (Jersey) Law 1991]

## **5 Amendment of declaration**

- (1) If during the continuance of an incorporated limited partnership any change is made or occurs in any of the particulars delivered pursuant to Article 4 (other than in the registered office of the partnership), a statement signed by a general partner, specifying the nature of the change, shall within 21 days of the date of the change be delivered to the registrar.
- (2) On the registration of a statement under this Article the registrar shall issue an amended certificate to that effect.
- (3) The amended certificate shall be signed by the registrar and sealed with the registrar's seal.
- (4) If default is made in compliance with paragraph (1), each of the general partners is guilty of an offence and liable to a fine of level 2 on the standard scale and in the case of a continuing offence to a further fine of level 1 on the standard scale for each day on which the offence so continues.

[Cf. Article 5, LP Law 1994; Article 5, SLP Law 200-]

## **6 General and limited partners**

A person may be a general partner and a limited partner at the same time in the same incorporated limited partnership.

[Cf. Article 6, LP Law 1994; Article 6, SLP Law 200-]

## **7 Name of partnership**

- (1) The name of each incorporated limited partnership shall end with the words "Incorporated Limited Partnership" in full or either of the abbreviations "Inc. L. P." and "Inc LP".
- (2) The surname of a limited partner shall not appear in the name of the incorporated limited partnership unless it is also the surname of one of the general partners or the partnership has been carried on under that name before the admission of that partner as a limited partner.
- (3) The corporate name or a significant part of the corporate name of a limited partner shall not appear in the name of an incorporated limited partnership unless it is also the corporate name or a significant part of the corporate name of one of the general partners or the partnership has been carried on under that name before the admission of that corporate partner as a limited partner.
- (4) A limited partner whose surname or corporate name appears in the name of the incorporated limited partnership contrary to paragraph (2) or (3) is liable as a general partner to any creditor of the partnership who has

extended credit without actual knowledge that the limited partner is not a general partner.

- (5) The registrar may refuse to register a declaration, or a statement delivered under Article 5(1) of a change of name of an incorporated limited partnership, where the name to be registered is in the registrar's opinion in any way misleading or otherwise undesirable.
- (6) A change of the name of an incorporated limited partnership shall not have effect until the registrar registers the statement and issues the amended certificate.

[Cf. Article 7, LP Law 1994; Article 7, SLP Law 200-]

## **8 Registered office**

- (1) An incorporated limited partnership shall have a registered office in Jersey.
- (2) An incorporated limited partnership does not comply with the requirement in paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being their use for that purpose.
- (3) An incorporated limited partnership may change the address of its registered office from time to time by giving notice to the registrar.
- (4) The change shall take effect on the notice being registered by the registrar, but until the end of the period of 14 days beginning on the date on which it is registered, a person may validly serve any document on the incorporated limited partnership at its previous registered office.
- (5) The registrar may refuse to register the notice if he or she is not satisfied that the occupier of the premises that are to be the registered office of the incorporated limited partnership authorizes their use as its registered office.
- (6) An incorporated limited partnership shall keep at its registered office –
  - (a) a register showing in alphabetical order for each limited partner –
    - (i) the full name and address of each limited partner who is an individual, or in the case of a body corporate its full name, the place where it is incorporated and its registered or principal office,
    - (ii) where the participation by limited partners is defined by percentage interests or by the number of units or other similar rights held by them, the percentage interest or the number and class of units or other rights held;
  - (b) a copy of the declaration, and the certificate of registration;
  - (c) a copy of the partnership agreement and each amendment made to it;
  - (d) a statement of the amount of any contributions agreed to be made by limited partners and the time at which, or events on the happening of which, the contributions are to be made;

- (e) a statement of the amount of money and nature and value of any other property or services contributed by each limited partner and the dates thereof;
  - (f) a statement of the amount of contributions returned to limited partners and the dates thereof;
  - (g) such other particulars as may be prescribed.
- (7) The records kept under paragraph (6) shall be –
- (a) *prima facie* evidence of the particulars which are by that paragraph directed to be contained therein;
  - (b) amended within 21 days of any change in the particulars contained therein;
  - (c) available for inspection and copying without charge during ordinary business hours at the request of a partner.
- (8) The registrar may require an incorporated limited partnership to produce its register during normal working hours to the registrar at its registered office, for inspection by the registrar.
- (9) A requirement under paragraph (8) shall be made by a notice in writing served on the incorporated limited partnership at its registered office. The notice shall specify a date (being not sooner than 5 days after it is served) and a time at which the partnership is to produce the register.
- (10) The Minister may prescribe information which –
- (a) an applicant for the formation of an incorporated limited partnership; or
  - (b) an incorporated limited partnership,
- must provide to the registrar for the purpose of showing that an occupier of premises authorizes or continues to authorize the use of the premises as its registered office.
- (11) An Order under paragraph (11) may contain such other provisions as are reasonably necessary for or incidental to that purpose.
- (12) If default is made in compliance with any requirement of or made under this Article, each of the general partners is guilty of an offence and liable to a fine of level 2 on the standard scale and in the case of a continuing offence to a further fine of level 1 on the standard scale for each day on which the offence so continues.

[Cf. Article 8, LP Law 1994; Article 8, SLP Law 200-]

## **9 Accounts and audit**

- (1) An incorporated limited partnership shall keep accounting records which are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy at any time the financial position of the partnership.
- (2) Unless the partnership agreement otherwise provides, it shall not be necessary for an incorporated limited partnership to appoint an auditor or have its accounts audited.

- (3) If default is made in compliance with this Article each of the general partners is guilty of an offence and liable to a fine of level 3 on the standard scale.

[Cf. Article 9, LP Law 1994; Article 9, SLP Law 200-]

## **10 Contribution of limited partner**

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

[Cf. Article 10, LP Law 1994; Article 10, SLP Law 200-]

## **11 Rights and obligations of general partner**

- (1) Subject to paragraph (2), a general partner in an incorporated limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners.
- (2) Without written consent or ratification by all the limited partners, a general partner has no authority –
  - (a) to do an act which makes it impossible to carry on the activities of the incorporated limited partnership; or
  - (b) to possess incorporated limited partnership property, or dispose of any rights in incorporated limited partnership property, for other than a partnership purpose;
  - (c) to admit a person as a general partner or to admit a person as a limited partner, unless the right to do so is given in the partnership agreement.
- (3) A general partner in an incorporated limited partnership is an agent of the partnership.
- (4) A general partner in an incorporated limited partnership, in exercising his or her powers and discharging his or her duties, shall –
  - (a) act honestly and in good faith with a view to the best interests of the partnership; and
  - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (5) Without prejudice to the operation of any rule of law empowering the partners in an incorporated limited partnership, or any of them, to authorize or ratify a breach of this Article, no act or omission of a general partner shall be treated as a breach of paragraph (4) if –
  - (a) all of the members of the partnership authorize or ratify the act or omission; and
  - (b) after the act or omission the partnership will be able to discharge its liabilities as they fall due.

- (6) Any debt or obligation incurred by a general partner in the conduct of the activities of an incorporated limited partnership shall be a debt or obligation of the partnership.
- (7) If an incorporated limited partnership fails to discharge any of its debts or obligations as it falls due, each general partner is personally liable to make good the default.

[Cf. Article 11, LP Law 1994; Article 11, SLP Law 200-; Article 74, Companies (Jersey) Law 1991]

## **12 Rights of limited partner**

A limited partner has the same right as a general partner –

- (a) during business hours, to inspect and make copies of or take extracts from the partnership records at all times;
- (b) to be given, on demand, true and full information of all things affecting the incorporated limited partnership and to be given a formal account of partnership affairs whenever circumstances render it just and reasonable.

[Cf. Article 13(1), LP Law 1994; Article 14, SLP Law 200-]

## **13 Share of profits**

- (1) A limited partner has, subject to this Law and the partnership agreement, the right to a share of the profits of the incorporated limited partnership.
- (2) It is immaterial whether or not the share of the profits is distributed to the limited partner.
- (3) A limited partner may receive from the incorporated limited partnership the share of the profits stipulated for in the partnership agreement only if, at the time when and immediately after payment is made, the partnership is solvent.
- (4) For a period of 6 months from the date of receipt by a limited partner of any payment representing a share of the profits of the incorporated limited partnership in circumstances where the requirements of paragraph (3) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such share of the profits is necessary to discharge a debt or obligation of the partnership incurred during the period that the share of the profits represented an asset of the partnership.

[Cf. Article 14, LP Law 1994; Article 15, SLP Law 200-]

## **14 Dealings by limited partner with partnership**

- (1) A limited partner may lend money to, borrow money from and enter into transactions with the incorporated limited partnership.
- (2) Except where the limited partner is also a general partner, a limited partner having, with respect to anything done under paragraph (1), a

claim against the assets of the incorporated limited partnership shall rank as a creditor of the partnership in respect of such claim.

- (3) For the purposes of this Article, a claim described in paragraph (2) does not include a claim for a return of capital contributions.

[Cf. Article 15, LP Law 1994; Article 16, SLP Law 200-]

### **15 Limited partners' rights as between themselves**

- (1) Subject to paragraph (2), limited partners, in relation to one another, shall rank –
- (a) *pari passu* in respect of the return of their contributions; and
  - (b) *pro rata* to those contributions in respect of profits.
- (2) Where there is more than one limited partner, the partnership agreement may provide that one or more of the limited partners is to have greater rights than the other limited partners as to –
- (a) the return of contributions;
  - (b) profits; or
  - (c) any other matter.

[Cf. Article 16, LP Law 1994; Article 17, SLP Law 200-]

### **16 Return of limited partner's contribution**

- (1) A limited partner shall not, on dissolution or otherwise, receive out of the capital of the incorporated limited partnership a payment representing a return of any part of the limited partner's contribution to the partnership unless at the time of and immediately following such payment the partnership is solvent.
- (2) For a period of 6 months from the date of receipt by a limited partner of any payment representing a return of contribution or part thereof received by such limited partner in circumstances where the requirements of paragraph (1) have not been met, such payment shall be repayable by such limited partner with interest at the prescribed rate to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the incorporated limited partnership incurred during the period that the contribution represented an asset of the partnership.
- (3) Except –
- (a) as provided in paragraph (2); or
  - (b) in the case of fraud,
- a limited partner shall not be liable to repay any payment representing a return of the limited partner's contribution or part thereof.
- (4) Subject to paragraphs (1) and (2), a limited partner may demand payment representing the return of all or part of his or her contribution –
- (a) on the dissolution of the incorporated limited partnership;
  - (b) at the time specified in the partnership agreement for its return; or

- (c) after the limited partner has given 6 months' notice in writing to all other partners, if no time is specified in the partnership agreement either for the return of the contribution or for the dissolution of the partnership.
- (5) A limited partner has, notwithstanding the nature of his or her contribution, only the right to demand and receive money in return for it, unless –
  - (a) there is a statement to the contrary in the partnership agreement; or
  - (b) all the partners consent to some other manner of returning the contribution.
- (6) In this Article “payment” includes the release of any obligation forming part of the capital contribution, and any liability to make repayments pursuant to paragraph (2) shall be construed accordingly.

[Cf. Article 17, LP Law 1994; Article 18, SLP Law 200-]

### **17 Limited partner’s liability to partnership**

A limited partner is liable to the incorporated limited partnership for the difference, if any, between the value of money or other property or services contributed by the limited partner to the partnership and the value of money or other property or services specified in the records kept under Article 8(6) to be contributed by the limited partner to the partnership.

[Cf. Article 18, LP Law 1994; Article 19, SLP Law 200-]

### **18 Limited partner’s liability to creditors**

- (1) Except as provided in this Law, a limited partner is not liable for the debts or obligations of the incorporated limited partnership.
- (2) Except as provided in paragraph (3), a limited partner is not liable as a general partner.
- (3) Subject to paragraph (4), if a limited partner participates in the management of the incorporated limited partnership in its dealings with persons who are not partners, that limited partner shall be liable in the event of the insolvency of the partnership for all debts and obligations of the partnership incurred during the period that he or she participated in the management of the partnership as though he or she were for that period a general partner.
- (4) A limited partner shall be liable under paragraph (3) only to a person who transacts with the incorporated limited partnership with actual knowledge of the participation of the limited partner in the management of the partnership and who then reasonably believed the limited partner to be a general partner.
- (5) A limited partner does not participate in the management of an incorporated limited partnership within the meaning of this Article by doing one or more of the following –

- (a) being a contractor for or an agent of or employee of the partnership or of a general partner, or being a shareholder of or acting as a director or officer of a corporate general partner;
  - (b) consulting with and advising a general partner with respect to the activities of the partnership;
  - (c) investigating, reviewing, approving or being advised as to the accounts or affairs of the partnership or exercising any right conferred by this Law;
  - (d) acting as surety or guarantor for the partnership either generally or in respect of specific obligations;
  - (e) approving or disapproving an amendment to the partnership agreement; or
  - (f) voting on, or otherwise signifying approval or disapproval of, one or more of the following –
    - (i) the winding up and dissolution of the partnership,
    - (ii) the purchase, sale, exchange, lease, pledge, hypothecation, creation of a security interest or other dealing in any asset, by or of the partnership,
    - (iii) the creation or renewal of an obligation by the partnership,
    - (iv) a change in the nature of the activities of the partnership,
    - (v) the admission, removal or withdrawal of a general or a limited partner and the continuation of the partnership thereafter, or
    - (vi) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners.
- (6) Paragraph (5) shall not import any implication that the possession or exercise of any other power by a limited partner will necessarily constitute the participation by such limited partner in the management of the incorporated limited partnership.

[Cf. Article 19, LP Law 1994; Article 20, SLP Law 200-]

## **19 Admission of additional limited partners**

An additional limited partner shall not be admitted to an incorporated limited partnership except in accordance with the partnership agreement and by entry in the register under Article 8(6)(a).

[Cf. Article 20, LP Law 1994; Article 21, SLP Law 200-]

## **20 Assignments**

- (1) A limited partner shall not assign his or her interest, in whole or in part, in the incorporated limited partnership unless –
  - (a) all the limited partners and all the general partners consent or the partnership agreement permits it; and

- (b) the assignment is made in accordance with the terms of the consent or the partnership agreement, as the case may be.
- (2) An assignee of the interest, in whole or in part, of a limited partner does not become a limited partner in the incorporated limited partnership until the assignee's ownership of the assigned interest is entered in the register referred to in Article 8(6)(a), and until so entered he or she has none of the rights of a limited partner exercisable against the partnership or against any of the partners other than the assignor.
- (3) Subject to paragraph (4), on becoming a limited partner, an assignee acquires the rights and powers and is subject to all the restrictions and liabilities that his or her assignor had in respect of the assigned interest immediately before the assignment.
- (4) On becoming a limited partner an assignee shall not assume any liability of the assignor arising under Article 13(4), 16(2) or 18(3) and, notwithstanding any term of the partnership agreement or any other agreement to the contrary, no such assignment shall relieve the assignor of any liability under those paragraphs.

[Cf. Article 21, LP Law 1994; Article 22, SLP Law 200-]

## **21 Winding up and dissolution**

- (1) The States may make Regulations providing for the winding up and dissolution of solvent and insolvent incorporated limited partnerships.
- (2) Regulations made under this Article may provide that a contravention of any such Regulation shall be an offence, and may provide that a person who is guilty of such an offence shall be liable to a penalty specified in the Regulations.
- (3) However, a penalty specified in the Regulations shall not exceed in any case imprisonment for 2 years and a fine.

## **22 Order for compliance**

- (1) Where a person who is required by this Law to sign, deliver or permit inspection or copying of a document refuses to do so, a person who is aggrieved by the refusal may apply to the Royal Court for an order directing the person to comply with the provisions of this Law and upon such application the Royal Court may make such order or any other order it considers appropriate in the circumstances.
- (2) An application may be made under paragraph (1) notwithstanding the imposition of a penalty in respect of the refusal and in addition to any other rights the applicant may have at law.

[Cf. Article 26, LP Law 1994; Article 28, SLP Law 200-]

## **23 Service of documents**

Service of a document on an incorporated limited partnership may be effected by sending it by post or delivering it to the registered office of the partnership.

[Cf. Article 28(4)(b), LP Law 1994; Article 30, SLP Law 200-]

#### **24 Authority to sign**

Where a general partner executes a document on behalf of the incorporated limited partnership, it shall be conclusively presumed in favour of any person who is not a partner that –

- (a) the general partner has the authority under which the general partner purports to act; and
- (b) the executed document has been validly executed.

[Cf. Article 29, LP Law 1994; Article 31, SLP Law 200-]

### **PART 3**

#### **MISCELLANEOUS AND FINAL PROVISIONS**

#### **25 Appointment of registrar**

- (1) The registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991 shall be the registrar of incorporated limited partnerships.
- (2) The Commission may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the establishment of incorporated limited partnerships.
- (3) Any functions of the registrar under this Law may, to the extent authorized by the registrar, be exercised by any officer on the staff of the Commission.

[Cf. Article 30, LP Law 1994; Article 32, SLP Law 200-]

#### **26 Fees and forms**

- (1) The Minister may require the payment to the registrar of such fees as may be prescribed in respect of –
  - (a) the performance by the registrar of such functions under this Law as may be prescribed, including the receipt by the registrar of any document under this Law which is required to be delivered to the registrar; and
  - (b) the inspection or copying of documents or other material held by the registrar under this Law.
- (2) The registrar may charge a fee for any services provided by the registrar otherwise than in pursuance of an obligation imposed by this Law.
- (3) Where a fee is provided for or charged under this Article for performance of an act or duty by the registrar, no action need be taken by the registrar until the fee is paid, and where the fee is payable on the receipt by the

registrar of a document required to be delivered to the registrar, he or she shall be deemed not to have received it until the fee is paid.

- (4) The Minister may prescribe forms to be used for any of the purposes of this Law and the manner in which any document to be delivered to the registrar is to be authenticated.
- (5) Fees paid to the registrar shall form part of the income of the Commission.

[Cf. Article 31, LP Law 1994; Article 33, SLP Law 200-]

## **27 Form of documents to be delivered to registrar**

Where any Article of this Law requires a document to be delivered to the registrar, but the form of the document has not been prescribed, it shall be sufficient compliance with that requirement if –

- (a) the document is delivered in a form which is acceptable to the registrar; or
- (b) any information to which the requirement relates is delivered in material, other than a document, which is acceptable to the registrar,

and the document or material, as the case may be, is accompanied by the prescribed fee, if any.

[Cf. Article 31A, LP Law 1994; Article 34, SLP Law 200-; Article 200, Companies (Jersey) Law 1991]

## **28 Inspection and production of documents kept by registrar**

- (1) Subject to the provisions of this Article, a person may –
  - (a) inspect a document delivered to the registrar under this Law and kept by the registrar or, if the registrar thinks fit, a copy thereof;
  - (b) require a certificate of the registration of a declaration or copy, certified or otherwise, of any other document or part of any other document referred to in sub-paragraph (a),

and a certificate given under sub-paragraph (b) shall be signed by the registrar and sealed with the registrar's seal.

- (2) A copy of or extract from a record kept by the registrar, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate copy of such record delivered to the registrar under this Law, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated therein of which direct oral evidence would be admissible.

[Cf. Article 32, LP Law 1994; Article 35, SLP Law 200-]

## **29 Destruction of old records**

- (1) Where an incorporated limited partnership has been dissolved, the registrar may, at any time after 10 years from the date of the dissolution,

destroy any records relating to that partnership in the registrar's possession or under the registrar's control.

- (2) After 10 years from the dissolution of an incorporated limited partnership no responsibility rests on a general partner or a person to whom custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

[Cf. Article 33, LP Law 1994; Article 36, SLP Law 200-]

### **30 Form of partnership's records**

- (1) The records which an incorporated limited partnership is required by this Law to keep may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.
- (2) An incorporated limited partnership shall take reasonable precautions –
  - (a) to prevent loss or destruction of;
  - (b) to prevent falsification of entries in; and
  - (c) to facilitate detection and correction of inaccuracies in,

the records required by this Law to be kept, and if default is made in compliance with this paragraph each of the general partners is guilty of an offence and liable to a fine of level 2 on the standard scale.

[Cf. Article 34, LP Law 1994; Article 37, SLP Law 200-]

### **31 Registration in the Public Registry**

The Judicial Greffier shall register in the Public Registry all Acts and orders affecting immovable property made under this Law.

[Cf. Article 35, LP Law 1994; Article 38, SLP Law 200-]

### **32 Offences**

A person who, in or in connection with any document, material, evidence or information –

- (a) that is required to be kept under Article 8(6); or
- (b) that is required to be delivered to the registrar under this Law,

knowingly or recklessly makes a statement that is false or misleading in any material particular shall be guilty of an offence and liable to imprisonment for 2 years and a fine.

[Cf. Article 36(1), (2), LP Law 1994; Article 39, SLP Law 200-]

### **33 Criminal liability of partners, directors and other officers**

- (1) This Article applies where an offence under this Law committed by an incorporated limited partnership or by any other body corporate, or by a limited liability partnership, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any of the following persons –
  - (a) in the case of an incorporated limited partnership, a general partner;
  - (b) in the case of an incorporated limited partnership, a limited partner who is participating in the management of the partnership;
  - (c) in the case of any other body corporate, a director, manager, secretary or other similar officer of the body corporate;
  - (d) in the case of a limited liability partnership, a partner; or
  - (e) in any case, any other person purporting to act in a capacity described in any of sub-paragraphs (a), (b), (c) and (d).
- (2) Where this Article applies, the person shall also be guilty of the offence and liable in the same manner as the incorporated limited partnership, the other body corporate or the limited liability partnership to the penalty provided for that offence.
- (3) Where the affairs of a body corporate (other than an incorporated limited partnership) are managed by its members, paragraphs (1) and (2) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

[Cf. Article 36A, LP Law 1994; Article 41, SLP Law 200-]

### **34 Aiders and abettors**

Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence punishable by this Law shall be liable to be dealt with, tried and punished as a principal offender.

[Cf. Article 37, LP Law 1994; Article 42, SLP Law 200-]

### **35 Orders**

- (1) The Minister may by Order make provision for the purpose of carrying this Law into effect and in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which is to be prescribed under this Law.
- (2) In prescribing fees for the purposes of this Law, the Minister may take into consideration such matters as he or she thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Minister and the Commission in discharging their respective functions under this Law.
- (3) An Order made under this Law may contain such incidental provisions as the Minister may consider to be necessary or expedient.

- (4) The Minister shall consult the Commission before making any Order under this Law.

[Cf. Article 38, LP Law 1994; Article 43, SLP Law 200-]

### **36 Rules of Court**

The power to make Rules of Court under the Royal Court (Jersey) Law 1948 shall include a power to make Rules for the purposes of this Law.

[Cf. Article 39, LP Law 1994; Article 44, SLP Law 200-]

### **37 Amendments to other enactments**

- (1) The enactments specified in the Schedule shall be amended in the manner set out in the Schedule.
- (2) In every other enactment, unless the context otherwise requires –
- (a) every reference to a partnership shall be construed as including a reference to an incorporated limited partnership, and in the context of any such reference “partner” and “member of a partnership” shall be construed accordingly; and
  - (b) every reference to a limited partnership shall be construed as including a reference to an incorporated limited partnership, and in the context of any such reference “partner”, “member of a partnership”, “general partner”, “the general partner” and “limited partner” shall be construed accordingly.

[Cf. Article 45, SLP Law 200-]

### **38 Relationship to other law**

- (1) The rules of customary law applicable to partnerships (*contrats de société*) shall apply to incorporated limited partnerships, except in so far as they are inconsistent with the express provisions of this Law.
- (2) Nothing in the Limited Partnerships (Jersey) Law 1994 shall apply to an incorporated limited partnership.

[Cf. Article 40, LP Law 1994; Article 46, SLP Law 200-]

### **39 Citation and commencement**

- (1) This Law may be cited as the Incorporated Limited Partnerships (Jersey) Law 200-.
- (2) This Law shall come into force on such day or days as the States by Act appoint.

## SCHEDULE

(Article 36)

### AMENDMENTS TO OTHER ENACTMENTS

#### 1 **Control of Borrowing (Jersey) Law 1947**

In Article 1(1) for the definitions “limited partnership” and “partnership agreement” there shall be substituted the following definition –

“ ‘limited partnership’ means a limited partnership as defined in Article 1 of the Limited Partnerships (Jersey) Law 1994, and also means an incorporated limited partnership as defined in Article 1 of the Incorporated Limited Partnerships (Jersey) Law 200-;”.

#### 2 **Income Tax (Jersey) Law 1961**

After Article 76A there shall be inserted the following Article –

##### **“76B Incorporated limited partnerships**

- (1) For the purposes of this Law, a trade, profession, business or vocation carried on by an incorporated limited partnership with a view to profit or gain shall be treated as carried on in partnership by its partners, and not by the incorporated limited partnership as such.
- (2) Accordingly, the property of the incorporated limited partnership shall be treated for those purposes as partnership property of the partners, and not as property of the incorporated limited partnership.
- (3) Subject to the provisions of this Article, the provisions of this Law apply to the profits or gains of a partner in an incorporated limited partnership.
- (4) Paragraph (3) shall not apply to the profits or gains derived from international activities of a partner in an incorporated limited partnership who is not resident in Jersey.
- (5) Articles 74 and 76 shall not apply to a partner in an incorporated limited partnership.
- (6) Articles 86 and 87 shall not apply in a case where the general partner of an incorporated limited partnership responsible for making the annual payment referred to in those Articles is not resident in Jersey or is a company that, pursuant to Article 123B of this Law, has made application and been charged to tax as an international business company.
- (7) Where a partner in a limited partnership is resident in Jersey, or is non-resident in Jersey and entitled to profits or gains not excluded from charge by paragraph (4), the general partner or, if there is

more than one general partner, the general partner who is first named in the partnership agreement shall, when required to do so by any general notice or by notice served on the general partner by the Comptroller, prepare and deliver a statement of those profits or gains arising to the said partners from the activities of the limited partnership.

(8) In this Article –

‘incorporated limited partnership’, ‘general partner’, ‘limited partner’, ‘partner’ and ‘partnership agreement’ have the same meanings as they have in the Incorporated Limited Partnerships (Jersey) Law 200-;

‘international activities’ has the same meaning as in Article 123B of this Law;

‘profits or gains’ does not include profits or gains of a capital nature.”.

### 3 Bankruptcy (Désastre) (Jersey) Law 1990

(1) In the Long Title, after the words “in the management of companies” there shall be inserted the words “and other bodies corporate and legal persons”.

(2) In Article 1(1) –

(a) after the definitions “hypothec”, “judicial hypothec” and “conventional hypothec” there shall be inserted the following definition –

“ ‘incorporated limited partnership’ has the meaning given to it in the Incorporated Limited Partnerships (Jersey) Law 200-;”;

(b) in the definition “registrar” –

(i) in paragraph (a), the word “and” shall be deleted,

(ii) after paragraph (a) there shall be inserted the following paragraph –

“(aa) in relation to an incorporated limited partnership, the registrar appointed pursuant to Article 24 of the Incorporated Limited Partnerships (Jersey) Law 200-; and”.

(3) In Article 4(1) –

(a) in sub-paragraph (d), the word “and” shall be deleted;

(b) after sub-paragraph (d) there shall be inserted the following sub-paragraph –

“(da) who is an incorporated limited partnership; or”.

(4) After Article 10(3) there shall be added the following paragraph –

“(4) If the debtor is an incorporated limited partnership –

(a) a transfer of any interest in the debtor not being a transfer made to or with the sanction of the Viscount; or

- (b) an alteration in the status of the partnership's partners, as partners,  
made after the declaration is void.”.

(5) In Article 17B –

- (a) after paragraph (1) there shall be added the following paragraph –

“(1A) For the purposes of Articles 17 and 17A, a person is connected with an incorporated limited partnership if the person is –

- (a) a general partner of the partnership;
- (b) an associate of a general partner of the partnership; or
- (c) an associate of the partnership.”;

- (b) in paragraph (2)(b), after the words “any person with whom he or she is in partnership”, there shall be inserted the words “(whether or not such a partnership is a limited partnership)”;

- (c) in paragraph 2(f) the word “and” shall be deleted;

- (d) in paragraph (2), after sub-paragraph (f) there shall be inserted the following sub-paragraphs –

“(fa) a limited partner of an incorporated limited partnership is an associate of a general partner of the partnership;

(fb) an incorporated limited partnership is an associate of another body corporate if the same person has control of both of those bodies corporate, or a person has control of one of those bodies corporate and either persons who are his or her associates, or he or she and persons who are his or her associates, have control of the other body corporate;

(fc) an incorporated limited partnership is an associate of another body corporate if each of those bodies corporate is controlled by a group of 2 or more persons, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he or she is an associate;

(fd) an incorporated limited partnership is an associate of another person if that person has control of the partnership or if that person and persons who are his or her associates together have control of the partnership; and”;

- (e) after paragraph (5) there shall be inserted the following paragraph –

“(5A) For the purposes of this Article, a general partner of an incorporated limited partnership shall be treated as employed by the partnership.”;

- (f) after paragraph (6) there shall be added the following paragraph –

“(6A) For the purposes of this Article, a person shall be taken as having control of an incorporated limited partnership if –

- (a) the terms of the partnership agreement so provide;

- (b) the general partners of the partnership or of another body corporate that has control of it (or any of them) are accustomed to act in accordance with his or her directions or instructions; or
  - (c) he or she has control (within the meaning of this Article) of another body corporate that has control of the partnership,
- and where 2 or more persons together satisfy either of the above conditions, they shall be taken as having control of the partnership.”.

(6) In Article 18 –

- (a) for paragraph (2) there shall be substituted the following paragraph –

“(2) Where the debtor is a company or an incorporated limited partnership, any person who –

- (a) is or was at the time of the is or was at the time of the declaration a director of the company; or
- (b) is or was at the time of the declaration a general partner of the partnership,

shall notify the Viscount immediately in writing of any change of his or her address, employment or name.”;

- (b) for paragraph (3) there shall be substituted the following paragraph –

“(3) Where an offence under this Article which has been committed by a company or an incorporated limited partnership is proved to have been attributable to –

- (a) any director, manager, secretary or other officer of the company, or any person who was purporting to act in any such capacity;
- (b) any general partner or other officer of the partnership, or any person who was purporting to act in any such capacity; or
- (c) any liquidator of the company or partnership,

he or she, as well as the company or partnership, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”.

(7) For Article 19(6) there shall be substituted the following paragraph –

“(6) Where an offence under paragraph (1) has been committed by a company or incorporated limited partnership –

- (a) any director, or any person who was purporting to act in such capacity, who knowingly and wilfully authorized or permitted the offence; or
- (b) any general partner of the partnership, or any person who was purporting to act in such capacity, who knowingly and wilfully authorized or permitted the offence,

shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”.

- (8) In Article 20 –
- (a) for paragraph (2) there shall be substituted the following paragraph –
- “(2) Where the debtor is a company or an incorporated limited partnership, the Viscount may at any time summon any officer of the company or partnership or person known or suspected to have in his or her possession any of its property or supposed to be indebted to it, or any person whom the Viscount deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company or partnership.”;
- (b) for paragraph (5) there shall be substituted the following paragraph –
- “(5) For the purposes of paragraph (2), ‘officer’ –
- (a) in the case of a company, includes a director, manager or secretary; and
- (b) in the case of an incorporated limited partnership, means a general partner.”.
- (9) In Article 24(1), in the definition “private office”, after the words “liquidator of a company,” there shall be inserted the words “general partner of an incorporated limited partnership,”.
- (10) After Article 36(2) there shall be inserted the following paragraph –
- “(2A) If the debtor is an incorporated limited partnership, the Viscount must notify the registrar in writing of the date of payment of the final dividend.”.
- (11) In Article 37(6) –
- (a) in sub-paragraph (a), the word “and” shall be deleted in the third place where it occurs;
- (b) after sub-paragraph (a) there shall be inserted the following sub-paragraph –
- “(aa) if the debtor is an incorporated limited partnership and the partnership agreement does not otherwise provide, distribute the surplus among the partners according to their rights and interests in the partnership; and”.
- (12) For Article 38(2) and (3) there shall be substituted the following paragraphs –
- “(2) Subject to paragraph (3), where the debtor is a company registered under the Companies Law or an incorporated limited partnership, it shall be dissolved with effect from the date on which the registrar receives the notice under Article 36(2) or (2A) (as the case may be), which notice the registrar shall thereupon register.
- (3) Paragraph (2) shall not apply where the Attorney General has notified the registrar that criminal proceedings have been instituted or are pending against the company or incorporated limited partnership.”.

- (13) In the heading to Part 10, after the words “COMPANY” there shall be added the words “OR INCORPORATED LIMITED PARTNERSHIP”.
- (14) Article 42A shall be renumbered as paragraph (1) of that Article, and to the Article there shall be added the following paragraph –
- “(1) Words and expressions (in addition to those already defined in Article 1(1) of this Law) that are used in this Part and defined in the Incorporated Limited Partnerships (Jersey) Law 200- Law have the same meanings in this Part as they have in that Law.”.
- (15) In Article 43(1) –
- (a) after the words “in respect of a company” there shall be inserted the words “or incorporated limited partnership”;
  - (b) in sub-paragraph (a), after the words “the company” there shall be inserted the words “or partnership”;
  - (c) in sub-paragraph (b), after the words “the company” there shall be inserted the words “or partnership”.
- (16) In Article 45 –
- (a) for paragraph (1) there shall be substituted the following paragraph –
- “(1) If, in the course of a désastre in respect of a company or an incorporated limited partnership, it appears that any business of the company or partnership has been carried on with intent to defraud its creditors or creditors of another person, or for a fraudulent purpose, the court may, on the application of the Viscount, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the assets of the company or partnership as the court thinks proper.”;
- (b) for paragraph (4) there shall be substituted the following paragraph –
- “(4) Where the court makes an order under this Article in relation to a person who is a creditor of the company or partnership, it may direct that the whole or part of a debt owed by the company or partnership to that person and any interest thereon shall rank in priority after all other debts owed by the company or partnership and after any interest on those debts.”.
- (17) After Article 45A there shall be inserted the following Article –

**“45AB Liability in respect of returned contributions**

- (1) This Article applies where a declaration has been made in respect of an incorporated limited partnership and –
  - (a) the partnership has within 6 months before the declaration made to a limited partner a payment representing a return of any part of that partner’s contribution to the partnership;
  - (b) the payment was not made wholly out of profits available for distribution; and

- (c) the aggregate realisable value of the partnership's assets and the amount paid by way of contribution to its assets (apart from this Article) is not sufficient for the payment of its liabilities and the expenses in connection with the 'désastre'.
  - (2) In this Article, the amount of a payment that has not been made wholly out of profits available for distribution is referred to as 'the relevant payment'.
  - (3) Subject to paragraph (4), the court on the application of the Viscount may order the limited partner to whom the payment was made, or a general partner, to contribute in accordance with this Article to the assets of the company or partnership so as to enable the insufficiency to be met.
  - (4) A limited partner to whom a payment was made may be ordered to contribute an amount not exceeding so much of the relevant payment as the limited partner received, together with such interest as may be payable by that partner to the incorporated limited partnership under Article 17(2) of the Incorporated Limited Partnership (Jersey) Law 200- in respect of the relevant payment.".
- (18) After Article 45B there shall be inserted the following Article –

**“45C Liability as contributories of present and past partners of incorporated limited partnerships**

- (1) Except as otherwise provided by this Article, where a declaration has been made in respect of an incorporated limited partnership, each present and past partner of the partnership is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the 'désastre', and for the adjustment of the rights of the contributories among themselves.
- (2) A contribution shall not be required from a present or past limited partner of an incorporated limited partnership, as such a partner, exceeding the amount for which, by virtue of Articles 18 and 19 of the Incorporated Limited Partnerships (Jersey) Law 200-, he or she is liable to the partnership.
- (3) A sum due to a partner of an incorporated limited partnership in his or her capacity as a partner, by way of profits or otherwise, is not in a case of competition between himself or herself and any other creditor who is not a partner of the partnership a liability of the partnership payable to that partner, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.".

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- (1) In Article 18, after the word "property" in both places where it appears, there shall be inserted the words "or services".
- (2) For Article 36(1) there shall be substituted the following Article –

**“36 Offences**

A person who, in or in connection with any document, material, evidence or information –

- (a) that is required to be kept under Article 8(4); or
- (b) that is required to be delivered to the registrar under this Law,

knowingly or recklessly makes a statement that is false or misleading in any material particular shall be guilty of an offence and liable to imprisonment for 2 years and a fine.”.