LIMITED LIABILITY COMPANIES (GENERAL PROVISIONS) (JERSEY) REGULATIONS 2022

Official Consolidated Version

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

Showing the law from 17 June 2026 to Current

Jersey

LIMITED LIABILITY COMPANIES (GENERAL PROVISIONS) (JERSEY) REGULATIONS 2022

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Jersey

LIMITED LIABILITY COMPANIES (GENERAL PROVISIONS) (JERSEY) REGULATIONS 2022

THE STATES make these Regulations under Article 60 of the Limited Liability Companies (Jersey) Law 2018 –

Commencement [see endnotes]

PART 1

PRELIMINARY

1 Interpretation

(1) In these Regulations –

"auditor" means –

(a) in the case of an individual, an individual who is a member of a recognised professional body and is permitted by that body to engage in public practice;

(b) in the case of a partnership, a partnership that is a qualified partnership and where the person responsible to the partnership for examining or reporting on the accounts of a limited liability company under Regulation 12 is an individual who is a member of a recognised professional body and is permitted by that body to engage in public practice; and

(c) in respect of a limited liability company, an individual, body corporate, limited liability body, limited liability company or firm authorised by the Commission under Regulation 15(5) to carry out an audit of the limited liability company;

"holding body" has the meaning given by Regulation 2;

"holding limited liability company" has the meaning given by Regulation 2;

"Law" means the Limited Liability Companies (Jersey) Law 2018;

"limited liability body" means an entity established or registered in a jurisdiction outside Jersey with legal personality separate from its members that is not a body corporate;

"LLC consent" means a consent, approval or vote given –

(a) by the members in accordance with the LLC agreement or Article 16 of the Law; or

(b) by the managers in accordance with the LLC agreement or Article 25 of the Law;

"manager" includes a member in whom the management of the limited liability company vests in accordance with Article 21 of the Law;

"officer", in relation to a limited liability company, means a manager or liquidator;

"partnership" includes –

(a) a firm of a similar character to a partnership formed under the law of a country or territory outside Jersey; and

(b) a limited liability partnership that is registered under the Limited Liability Partnerships (Jersey) Law 2017 or a firm of a similar character to a limited liability partnership formed under the law of a jurisdiction outside Jersey,

but excludes a body corporate and a limited liability company;

"prospectus" means an invitation to the public to become a member of a limited liability company or to acquire or apply for any securities of a limited liability company, for which purposes an invitation will not be considered to be made to the public where –

(a) the invitation is addressed to either or both of the following –

(i) qualified investors as defined in Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (OJ L 168, 30.6.2017, p. 12), as amended from time to time,

(ii) professional investors as defined in Article 3(4) of the Financial Services (Investment Business (Special Purpose Investment Business – Exemption)) (Jersey) Order 2001;

(b) the number of persons (other than qualified investors and professional investors described in sub-paragraph (a)) to whom the invitation is addressed does not exceed 50 in Jersey and 150 elsewhere;

(c) the minimum consideration which may be paid or given by a person for securities to be acquired by that person is at least EUR 100,000 (or an equivalent amount in another currency);

(d) the securities to be acquired or applied for are denominated in amounts of at least EUR 100,000 (or an equivalent amount in another currency);

(e) the invitation relates to the issue of LLC interests or other securities by a limited liability company to its members in satisfaction, in whole or in part, of a distribution to be made by that limited liability company;

(f) the invitation relates to a scheme specified in Regulation 28(2); or

(g) any combination of sub-paragraphs (a) to (f) applies;

"qualified partnership" means a partnership –

(a) in which more than half of its partners are any of, or any combination of, the following –

(i) individuals who are members of recognised professional bodies,

(ii) partnerships that are themselves auditors as defined in paragraph (b) of the definition "auditor",

(iii) bodies corporate that are themselves auditors as defined in paragraph (c) of the definition "auditor",

(iv) individuals who hold a qualification to audit accounts under the law of a European Economic Area Member State other than the Republic of Ireland; and

(b) in which more than half of the voting rights in the partnership and, if it has a management body, in that body, are held by persons specified in sub-paragraph (a);

"recognised professional body" means one of the following –

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland;

(c) the Association of Chartered Certified Accountants;

(d) Chartered Accountants Ireland;

"takeover offer" has the meaning given by Regulation 36(1);

"securities" means –

(a) LLC interests, debentures, debenture stock, loan stock and bonds;

(b) warrants entitling the holders to subscribe for any securities specified in sub-paragraph (a); or

(c) other securities of any description;

"subsidiary" has the meaning given by Regulation 2;

"wholly-owned subsidiary" has the meaning given by Regulation 2.[1]

(2) In these Regulations, references to a body corporate do not include a limited liability company registered as a body corporate.[2]

2 Meanings of "subsidiary", "wholly-owned subsidiary" "holding body" and "holding limited liability company"

(1) A limited liability company is a subsidiary of a body corporate or another limited liability company if –

(a) the second body –

(i) holds a majority of the voting rights in the first body,

(ii) is a member of the first body and has the right to appoint or remove a majority of the managers of the first body, or

(iii) is a member of the first body and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in the first body; or

(b) the first body is a subsidiary of a limited liability company or a body corporate which is itself a subsidiary of the second body.

(2) A limited liability company is a wholly-owned subsidiary of another limited liability company or a body corporate if the first body has no members except –

(a) the second body; and

(b) wholly-owned subsidiaries of or persons acting on behalf of the second body or the second body's wholly-owned subsidiaries.

(3) A limited liability company is the holding body of another limited liability company or a body corporate if the second body is a subsidiary of the first body.

(4) A holding limited liability company is a limited liability company that is a holding body.

3 Members and managers

(1) An individual person must not be a member or a manager of a limited liability company if –

(a) the person has not attained the age of 18 years; or

(b) the person lacks capacity as defined in Article 4 of the Capacity and Self-Determination (Jersey) Law 2016 and –

(i) another person is acting for and on behalf of that person by authority of a lasting power of attorney conferred under Part 2 of the Capacity and Self-Determination (Jersey) Law 2016, or

(ii) a delegate is appointed for that person under Part 4 of the Capacity and Self-Determination (Jersey) Law 2016; or

(c) the person is disqualified from being a member or a manager under Regulation 4 or any other enactment.

(2) The following types of partnership must not be a manager of a limited liability company –

(a) an incorporated limited partnership;

(b) a separate limited partnership;

(c) a limited liability partnership.

4 Disqualification orders

(1) If it appears to the Minister, the Commission or the Attorney General that it is in the public interest that a person should not without the leave of the Court be a manager of a limited liability company, the Minister, the Commission or the Attorney General may apply to the Court for an order to that effect against the person.

(2) The Court may make the order applied for if it is satisfied that the person's conduct makes the person unfit to be concerned in the management of a limited liability company.

(3) A person subject to an order under paragraph (2) is prohibited from being a member of a limited liability company that has not appointed a manager.

(4) An order under paragraph (2) is made for a specified period which must not exceed 15 years.

(5) A person who acts in contravention of an order made under this Regulation commits an offence and is liable to a fine and 2 years imprisonment.

5 Personal responsibility for liabilities where person acts while disqualified

(1) A person who acts in contravention of an order made under Regulation 4 is personally responsible for any liabilities of the limited liability company that are incurred at a time when that person was, in contravention of the order,involved in its management.

(2) Where a person is personally responsible under paragraph (1) for liabilities of a limited liability company, the person is jointly and severally liable in respect of those

liabilities with it and with any other person who, whether under this Regulation or otherwise, is so liable.

PART 2

ACCOUNTS AND AUDIT

DIVISION 1 – ACCOUNTS

6 Accounts

(1) A limited liability company must keep accounting records or returns of the limited liability company that are sufficient to show and explain the limited liability company's transactions and to disclose with reasonable accuracy at any time the financial position of the limited liability company at that time.

(2) A limited liability company whose accounting records are kept in Jersey –

(a) may provide its secretary with the accounting records of the limited liability company at any time; and

(b) must provide its secretary, within one month of the end of the limited liability company's accounting period, with any accounting records of the limited liability company in respect of that accounting period that have not already been provided under sub-paragraph (a).

(3) A limited liability company whose accounting records are kept outside Jersey must provide its secretary, at intervals of not more than 6 months, with a return with respect to the business dealt with in those accounting records in respect of the 6-month period ending no earlier than one month before the date of providing the return.

(4) A limited liability company that fails to provide to its secretary its accounting records or a return as required under paragraph (2) or (3) commits an offence and is liable to a fine of level 3 on the standard scale.

(5) Accounts prepared by a limited liability company must –

(a) be prepared in accordance with generally accepted accounting principles; and

(b) specify which generally accepted accounting principles have been adopted in their preparation.

(6) A limited liability company's accounting period must be –

(a) not more than 18 months beginning on the day the limited liability company was registered; and

(b) if the limited liability company had previously prepared accounts, not more than 18 months beginning at the end of the period covered by the most recent accounts.

(7) For the purposes of this Regulation, the managers of a holding limited liability company need not prepare separate accounts under paragraph (1) if consolidated accounts for the limited liability company are prepared, unless by virtue of the LLC agreement or an LLC consent given by the managers of the limited liability company separate accounts are required.

7 Publication of interim accounts

A limited liability company must not publish interim accounts, whether or not audited, unless the accounts have been prepared in accordance with any generally accepted accounting principles.

8 Copies of accounts

(1) This Regulation applies where a member of a limited liability company who has not previously been furnished with a copy of its latest accounts makes a written request to the limited liability company to be furnished with a copy of those accounts together with a copy of any auditor's report on them.

(2) The limited liability company must, without charge and within 7 days of the request being made to it, furnish to the person the accounts requested together with any auditor's report on them.

9 Delivery of accounts to registrar

(1) The managers of a limited liability company that has circulated a prospectus must, for each financial period of the limited liability company, deliver to the registrar –

(a) a copy of the limited liability company's accounts for the period signed on behalf of the managers by one of them;

(b) a copy of the auditor's report on the accounts; and

(c) if any of the documents is not in English, a copy of it in English, certified to be a correct translation.

(2) The documents must be delivered to the registrar within 7 months after the end of the financial period to which they relate.

(3) If a limited liability company ceases to have to audit and deliver its accounts to the registrar under Regulation 27 during a financial period –

(a) paragraph (1) applies in relation to the limited liability company in respect of that financial period; but

(b) the requirement in paragraph (1) to deliver accounts is taken to have been satisfied if the accounts relate to either all of the financial period (including a period when the limited liability company was no longer required to audit and deliver its accounts to the registrar under Regulation 27) or to only the part of the financial period during which the limited liability company was required to audit and deliver its accounts to the registrar.

(4) Paragraph (5) applies if a limited liability company applies in writing to the Commission for an extension, not later than one month before the end of the period mentioned in –

(a) Regulation 6(2)(b) or (3); or

(b) paragraph (2) of this Regulation.

(5) The Commission may, by written notice to the limited liability company, extend the period if it is satisfied that a special reason for doing so exists.

(6) If the Commission does so, it must send a copy of the notice to the registrar.

(7) A limited liability company must pay the published fee and any late fee on delivering documents under this Regulation.

10 Failure to comply with Regulation 6, 7, 8 or 9

(1) If a limited liability company fails to comply with Regulation 6 or 7, each of the following commits an offence and is liable to a fine of level 3 on the standard scale –

(a) the limited liability company;

(b) each manager of the limited liability company.

(2) If a limited liability company fails to comply with Regulation 8 or 9, each of the following commits an offence and is liable to a fine of level 2 on the standard scale –

(a) the limited liability company;

(b) each manager of the limited liability company.

DIVISION 2 – AUDIT

11 Appointment and removal of auditors

(1) A limited liability company must appoint an auditor if –

(a) it is circulating a prospectus in accordance with Regulation 30; or

(b) its LLC agreement requires it.

(2) The audit of the limited liability company's accounts by any person other than an auditor appointed under paragraph (1) is of no effect for the purposes of this Part.

(3) The members or managers of the limited liability company must, at any time before the conclusion of the limited liability company's first financial period, approve the appointment of an auditor to hold office to the conclusion of the following financial period.

(4) An auditor appointed under paragraph (3) continues to hold office until the appointment of the auditor is brought to an end by an LLC consent of the members.

(5) A limited liability company may, in accordance with its LLC agreement or with Article 16 of the Law, at any time remove an auditor despite anything in any agreement between it and the auditor.

(6) Nothing in this Regulation is to be taken as depriving a person removed under it of compensation or damages payable to the person in respect of the termination of the person's appointment as auditor.

(7) A limited liability company that fails to comply with paragraph (1) and each manager of the limited liability company in default commits an offence and –

(a) in the case of the company, is liable to a fine; and

(b) in the case of a manager, is liable to two years imprisonment or a fine, or both

12 Auditor's report

(1) The auditor appointed under Regulation 11 must make a report to the limited liability company's members on the accounts of the limited liability company examined by the auditor.

(2) The report must state whether, in the opinion of the auditor, the accounts –

(a) have been properly prepared in accordance with these Regulations; and

(b) give a true and fair view or, alternatively, are presented fairly in all material respects.

(3) The report must –

(a) state the name of the auditor; and

(b) be signed and dated.

(4) If –

(a) the auditor is an individual, the report must be signed by the auditor; or

(b) the auditor is a firm, the report must be signed by the individual in the firm who is responsible to it for examining and reporting on the accounts, in the individual's name for and on behalf of the auditor.

(5) The fact that an individual signs an audit report does not make the individual liable to any civil liability to which the individual would not otherwise be liable.

13 Auditor's duties and powers

(1) This Regulation applies to an auditor appointed under Regulation 11.

(2) The auditor of a limited liability company must, in preparing an audit report, carry out such investigations as will enable the auditor to form an opinion as to –

(a) whether proper accounting records have been kept by the limited liability company;

(b) whether proper returns adequate for the audit have been received from branches not visited by the auditor; and

(c) whether the limited liability company's accounts are in agreement with its accounting records and returns.

(3) The auditor must state in the report if the auditor is of the opinion –

(a) that proper accounting records have not been kept by the limited liability company;

(b) that proper returns adequate for the audit have not been received from branches not visited by the auditor; or

(c) that the limited liability company's accounts are not in agreement with its accounting records and returns.

(4) The auditor of a limited liability company –

(a) has a right of access to the limited liability company's records at all times; and

(b) is entitled to require any relevant person to provide any information and explanations as the auditor thinks necessary for the performance of the auditor's duties.

(5) Any information or explanation provided by a person in response to a requirement under paragraph (4)(b) may not be used in evidence against the person in criminal proceedings except proceedings for an offence under Regulation 14(2).

(6) Nothing in paragraph (4)(b) compels a person to provide any information or explanation which the person would be entitled to refuse to provide in proceedings in court on the ground of legal professional privilege.

(7) The auditor of a limited liability company is entitled –

(a) to receive notice of, and to attend, any meeting of members of the limited liability company; and

(b) to be heard on any part of the business of that meeting that concerns the auditor.

(8) The auditor of a limited liability company must mention in an audit report any failure to obtain from the limited liability company any information or explanation that, to the best of the auditor's knowledge and belief, was necessary for the audit.

(9) An auditor of a limited liability company may resign from office by depositing at the limited liability company's registered office –

(a) a written notice of resignation; and

(b) a statement under paragraph (11).

(10) The notice operates to bring the auditor's term of office to an end –

(a) on the date on which the notice is deposited; or

(b) if a later date is specified in the notice, on that later date.

(11) When, for any reason, an auditor of a limited liability company ceases to hold office, the auditor must deposit at the limited liability company's registered office –

(a) a statement to the effect that there are no circumstances connected with the auditor's ceasing to hold office that the auditor considers should be brought to the notice of the members or creditors of the limited liability company; or

(b) if there are such circumstances, a statement setting out those circumstances.

(12) A limited liability company that receives a statement mentioned in paragraph (11)(b) must, within 14 days of receiving the statement, send a copy of it to each member of the limited liability company.

(13) An auditor who fails to comply with paragraph (11) and each officer of the auditor in default commits an offence and is liable to a fine.

(14) A limited liability company that fails to comply with paragraph (12) and each manager of the limited liability company in default commits an offence and is liable to a fine.

(15) In this Regulation and in Regulation 14, "relevant person" means –

(a) any person who is, or at any relevant time was, an officer, manager or the secretary of the limited liability company;

(b) any person who is, or at any relevant time was, an employee of the limited liability company and who appears to possess information which the auditor thinks necessary for the performance of the auditor's duties; or

(c) any person who holds or is accountable for, or who at any relevant time held or was accountable for, any of the limited liability company's records and who appears to possess such information.

14 False statements to auditors

(1) This Regulation applies to a limited liability companies that is required to appoint an auditor under Regulation 11.

(2) A relevant person (as defined in Regulation 13(15)) commits an offence and is liable to a fine and 5 years imprisonment if –

(a) knowingly or recklessly, the relevant person makes to the auditor of the limited liability company, either in writing or orally, a statement that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, as auditor of the limited liability company; and

(b) the statement is false or misleading in a material particular.

15 Ineligibility and authorisation to act as auditor

(1) A person who is not an auditor must not –

(a) accept an appointment to be or act as the auditor of a limited liability company for the purposes of this Part; or

(b) attempt to persuade others that the person is an auditor.

(2) If, during the term of office of the auditor of a limited liability company, the auditor becomes ineligible for appointment as the auditor of the limited liability company, the auditor must immediately –

(a) resign from office; and

(b) in accordance with Regulation 13(9), (10)(a) and (11), give written notice to the limited liability company that the auditor has resigned by reason of becoming ineligible for appointment.

(3) A person commits an offence and is liable to a fine and 2 years imprisonment if the person –

(a) accepts an appointment to be, or acts as, the auditor of a limited liability company in contravention of paragraph (1)(a);

(b) attempts to persuade others that the person is an auditor in contravention of paragraph (1)(b); or

(c) fails to resign from office under paragraph (2)(a) or give the notice mentioned in paragraph (2)(b).

(4) In proceedings against a person for an offence under paragraph (3) it is a defence for the person to show that the person did not know and had no reason to believe that the person was, or had become, ineligible for appointment as the auditor of the limited liability company.

(5) The Commission may, in respect of a limited liability company, on the application of an individual, a body corporate, a limited liability body or a firm that is not an auditor, authorise the individual, body corporate, limited liability body or firm to carry out an audit of the limited liability company for the purposes of this Part.

(6) An individual, body corporate, limited liability body or firm that knowingly or recklessly provides information in respect of an application under paragraph (5) that is false or misleading in a material particular commits an offence and is liable to a fine and 2 years imprisonment.

(7) The Commission may, when authorising an individual, a body corporate, a limited liability body or a firm under paragraph (5) or at any subsequent time, make the authorisation subject to the individual, body corporate, limited liability body or firm complying with any conditions or limitations that the Commission considers appropriate, including, in particular, in the case of a firm, a condition or limitation that would set out whom the firm may be responsible to the firm for examining and reporting on the accounts of a limited liability company under Regulation 11.

(8) The Commission may amend the conditions or limitations –

(a) at any time of its own volition; or

(b) on the application of the individual, body corporate, limited liability body or firm authorised by the Commission.

(9) The Commission may suspend or revoke the authorisation of an individual, a body corporate, a limited liability body or a firm under paragraph (5) if –

(a) in the opinion of the Commission, the individual, body corporate, limited liability body or firm is not competent or is not a fit and proper individual, body corporate, limited liability body or firm to carry out an audit of the limited liability company for the purposes of this Part; or

(b) the individual, body corporate, limited liability body or firm has breached any condition or limitation imposed under paragraph (7).

(10) The Commission may, under paragraph (9), suspend the authorisation of an individual, a body corporate, a limited liability body or a firm –

(a) for a specified period; or

(b) until, on the application of the individual, body corporate, limited liability body or firm, the individual, body corporate, limited liability body or firm satisfies the Commission that the suspension may be revoked.

(11) If an individual, a body corporate, a limited liability body or a firm that is authorised under paragraph (5) requests the Commission to suspend or revoke the authorisation of the individual, body corporate, limited liability body or firm, the Commission must comply with the request and may publish –

(a) the name of the individual, body corporate, limited liability body or firm;

(b) details of the action it took in respect of the individual, body corporate, limited liability body or firm; and

(c) the reason why it took that action.

(12) The suspension of the authorisation of an individual, a body corporate, a limited liability body or a firm under paragraph (11) must be –

(a) for a specified period; or

(b) if no period is specified, until the individual, body corporate, limited liability body or firm applies to the Commission for the authorisation to be restored.

(13) The Commission must serve a notice on the relevant individual, body corporate, limited liability body or firm within 7 days after taking one of the following actions –

(a) refusing to authorise an individual, a body corporate, a limited liability body or a firm under paragraph (5);

(b) making the authorisation of an individual, a body corporate, a limited liability body or a firm subject to conditions or limitations under paragraph (7);

(c) amending conditions or limitations of the authorisation of an individual, a body corporate, a limited liability body, or a firm under paragraph (8)(a);

(d) refusing to amend any condition or limitation of the authorisation of an individual, a body corporate, a limited liability body or a firm on an application made under paragraph (8)(b);

(e) suspending or revoking the authorisation of an individual, a body corporate, a limited liability body or a firm under paragraph (9);

(f) refusing to revoke the suspension of the authorisation of an individual, a body corporate, a limited liability body or a firm on an application under paragraph (10)(b).

(14) The notice must –

(a) specify the action taken by the Commission;

(b) set out the reasons why the Commission took the action; and

(c) advise the individual, body corporate, limited liability body or firm of the right under paragraph (15) to appeal to the Court against the action taken by the Commission.

(15) Where the Commission has served a notice on an individual, a body corporate, a limited liability body or a firm under paragraph (14) –

(a) the individual, body corporate, limited liability body or firm may, within 28 days of the service of the notice or within such longer period as the Court may approve, appeal to the Court against the action taken by the Commission specified in the notice, on the ground that it was unreasonable for the Commission to take the action in all the circumstances of the case; but

(b) unless the Court orders otherwise, if the individual, body corporate, limited liability body or firm does appeal, the action taken by the Commission and specified in the notice is not stayed and continues to have effect.

(16) The Court may, on an appeal under paragraph (15), make such order as it considers appropriate.

(17) Paragraph (18) applies if –

(a) the Commission –

(i) makes the authorisation of an individual, a body corporate, a limited liability body or a firm subject to conditions or limitations under paragraph (7),

(ii) amends conditions or limitations of the authorisation of an individual, a body corporate, a limited liability body or a firm under paragraph (8), or

(iii) suspends or revokes the authorisation of an individual, a body corporate, a limited liability body or a firm under paragraph (9); and

(b) the period for making an appeal under paragraph (15) has expired and no appeal was made or, if made, was unsuccessful or withdrawn.

(18) If this paragraph applies, the Commission may publish –

(a) the name of the individual, body corporate, limited liability body or firm;

(b) details of the action it took in respect of the individual, body corporate, limited liability body or firm; and

(c) the reason why it took that action.

16 Independence requirements – personal relationships

(1) An auditor must not act as the auditor of a limited liability company if the auditor is –

(a) a manager, secretary or employee of the limited liability company;

(b) a partner, or employee, of a manager, a secretary, or an employee of the limited liability company; or

(c) a person against whom an order under Regulation 4 is in force.

(2) An auditor must not act as the auditor of a limited liability company if –

(a) the auditor is –

(i) an officer, director or employee of a limited liability company or body corporate, or

(ii) a partner, or employee, of an officer, director or employee of a limited liability company or body corporate; and

(b) the limited liability company or body corporate is –

(i) a subsidiary or holding body of the limited liability company, or

(ii) a subsidiary of the limited liability company's holding body.

17 Independence requirements – partnership relationships

(1) An auditor that is a partnership must not act as the auditor of a limited liability company if any of the partners of the partnership is a person who, under Regulation 16, must not act as the auditor of the limited liability company.

(2) An auditor that is a partnership must not act as the auditor of a limited liability company if any of the partners of the partnership is –

(a) the limited liability company whose accounts are to be audited;

(b) a holding body or subsidiary of that limited liability company; or

(c) a subsidiary of any such holding body.

18 Independence requirements – body corporate or limited liability body relationships

(1) An auditor that is a body corporate or limited liability body must not act as the auditor of a limited liability company if any of the individuals who are responsible to the auditor for examining or reporting on the accounts of the limited liability company, or any of the shareholders, members, directors or managers of the body corporate or limited liability body, is a person who, under Regulation 16, must not act as the auditor of the limited liability company.

(2) An auditor that is a body corporate or limited liability body must not act as the auditor of a limited liability company if any of the following hold shares or membership interests in the body corporate or limited liability body –

(a) the limited liability company whose accounts are to be audited;

(b) a holding body or subsidiary of that limited liability company; or

(c) a subsidiary of any such holding body.

19 Effect of lack of independence

(1) If, during an auditor's term of office as auditor of a limited liability company, the auditor becomes prohibited from acting under Regulation 16, 17 or 18, the auditor must immediately –

(a) resign from office; and

(b) in accordance with Regulation 13(9), (10)(a) and (11), give written notice to the limited liability company that the auditor has resigned by reason of lack of independence.

(2) An auditor and each officer of the auditor in default commits an offence and is liable to a fine and 2 years imprisonment if the auditor –

(a) fails to resign from office when required to do so under paragraph (1)(a); or

(b) fails to give the notice required to be given under paragraph (1)(b).

(3) In proceedings against an auditor or an officer for an offence mentioned in paragraph (2) it is a defence for the auditor or officer to show that the auditor or officer did not know and had no reason to believe that the auditor was, or had become, prohibited from acting as an auditor of the limited liability company under Regulation 16, 17 or 18.

20 Effect of appointment of a partnership

(1) This Regulation applies where a partnership constituted under the law of Jersey or of a jurisdiction in which a partnership is not a legal person is under this Part appointed as the auditor of a limited liability company.

(2) Unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners.

(3) If the partnership ceases, the appointment is to be treated as extending to –

(a) any appropriate partnership that succeeds to the practice of the partnership; or

(b) any other appropriate person who succeeds to the practice having previously carried it on in partnership.

(4) For the purposes of paragraph (3) –

(a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and

(b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if the partnership or person succeeds to the whole or substantially the whole of the business of the former partnership.

(5) If the partnership ceases and the appointment is not treated under paragraph (3) as extending to any partnership or other person, the appointment may, with the approval of the limited liability company in respect of which the partnership is auditor, be treated as extending to an appropriate partnership, or other appropriate person, who succeeds to –

(a) the business of the former partnership; or

(b) such part of that business as is agreed by the limited liability company by LLC consent to be treated as comprising the appointment.

(6) For the purposes of this Regulation, a partnership or other person is "appropriate" if the partnership or person –

(a) is an auditor; and

(b) is not prohibited under Regulation 16, 17 or 18 from acting as auditor of the limited liability company.

21 Exemption from liability for damages

(1) A person to whom this Regulation applies is not liable in damages for anything done or omitted to be done in the discharge or purported discharge of functions to which this Regulation applies.

(2) This Regulation applies to the following persons –

(a) a recognised professional body;

(b) an officer or employee of a recognised professional body; and

(c) a member of the governing body or a member of a committee of a recognised professional body.

(3) This Regulation applies to the functions of a recognised professional body so far as relating to, or to matters arising out of, any of the following –

(a) the rules, practices, powers and arrangements of the body;

(b) the obligations to promote and maintain high standards of integrity in the conduct of audit work;

(c) the obligations imposed on the body by or under this Part.

(4) Paragraph (1) does not apply –

(a) if the act or omission is shown to have been in bad faith; or

(b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000 (acts of public authorities unlawful if incompatible with Convention rights).

22 Matters to be notified to the Commission

(1) The Commission may require a recognised professional body –

(a) to notify the Commission immediately of the occurrence of events that the Commission may specify in writing and to give the Commission any information in respect of those events as is so specified; and

(b) to give the Commission, at the times or in respect of the periods that the Commission may specify in writing, any information as is specified.

(2) The notices and information required to be given must be those that the Commission may reasonably require for the exercise of the Commission's functions under this Part.

(3) The Commission may require information given under this Regulation to be given in a specified form or verified in a specified manner.

(4) A notice or information required to be given under this Regulation must be given in writing unless the Commission specifies or approves some other manner.

23 Commission may require auditors to give information

(1) The Commission may, by written notice, require an auditor to give the Commission any information that the Commission may reasonably require for the exercise of its functions under this Part.

(2) The Commission may require information given under this Regulation to be given in a specified form or verified in a specified manner.

(3) Any information required to be given under this Regulation must be given in writing unless the Commission specifies or approves some other manner.

(4) An auditor and each officer of that auditor, commits an offence and is liable toa fine of level 3 on the standard scale if the auditor fails, within a reasonable time, to comply with a requirement made by the Commission under this Regulation.

(5) An auditor and each officer of that auditor, commits an offence and is liable to 2 years imprisonment or a fine, or both if the auditor in purported compliance with such a requirement, knowingly or recklessly provides information that is false or misleading in a material particular.

24 Delegation of the Commission's powers and duties

(1) The Minister may, on the recommendation of the Commission, make an Order under this Regulation that enables the powers and duties of the Commission under Regulations 22 and 23 to be exercised or carried out by a body designated by the Order to the extent specified in the Order.

(2) That body may be either –

(a) a body corporate or limited liability company established by the Order; or

(b) a body (whether a body corporate or an unincorporated association) that is already in existence either in Jersey or elsewhere.

(3) The Order has the effect of transferring to the body designated by it all the powers and duties of the Commission under Regulations 22 and 23, subject to any exceptions and reservations specified in the Order.

(4) The Order may confer on the body designated by it other powers and duties supplementary or incidental to those transferred that appear to the Minister to be appropriate.

(5) During the time the powers and duties of the Commission are transferred by an Order made under this Regulation to a body designated in the Order –

(a) in the case of any transferred powers of the Commission, the Commission cannot exercise them concurrently with the body; and

(b) in the case of any transferred duties of the Commission, the obligation to carry them out rests with the body and not with the Commission.

(6) The Minister must not make an Order under this Regulation transferring powers or duties of the Commission to an existing body unless it appears to the Minister that –

(a) the body is able and willing to exercise the powers or to carry out the duties that would be transferred by the Order; and

(b) the body has arrangements in place relating to the exercise of the powers or to the carrying out of the duties that are likely to ensure that the conditions in paragraph (7) are met.

(7) The conditions are –

(a) that the powers and duties in question will be exercised or carried out effectively; and

(b) where the Order is to contain any requirements or other provisions specified in paragraph (8), that those powers and duties will be exercised or carried out in accordance with any such requirements or provisions.

(8) The Order may contain requirements or other provisions relating to the exercise of the powers or the carrying out of the duties by the designated body that appear to the Minister to be appropriate.

(9) Those provisions may include provisions providing for the designated body to publish and charge fees for exercising the powers or carrying out the duties delegated to it under the Order.

25 Confidentiality

(1) This Regulation applies to information (in whatever form) –

(a) that relates to –

(i) the private affairs of an individual, or

(ii) any particular business; and

(b) that is provided to a body or person to which this Regulation applies in connection with the exercise of its functions under this Part.

(2) This Regulation applies to –

(a) a recognised professional body;

(b) the Commission; and

(c) the registrar.

(3) Except as provided by paragraphs (4), (6) and (7), the information must not, without the consent of the individual or the person for the time being carrying on the business, be disclosed –

(a) during the lifetime of the individual; or

(b) so long as the business continues to be carried on.

(4) The information may be disclosed to a person or body mentioned in paragraph (5) to enable the person or body to carry out the functions of the person or body.

(5) The persons and bodies are –

(a) a recognised professional body;

(b) the Commission;

(c) the registrar;

(d) any other authority, body or person having responsibility for the qualification, supervision or regulation of auditors, whether situated in Jersey or elsewhere;

(e) an organisation that, in a jurisdiction outside Jersey, carries out in that jurisdiction any function that is the same as, or similar to, a function that is carried out in Jersey by the Commission; or

(f) an officer or agent of a person or body mentioned in sub-paragraphs (a) to (d).

(6) This Regulation does not prohibit the disclosure of information –

(a) when it is to assist a recognised professional body, the Commission or the registrar to carry out its duties under this Part;

(b) that is to be used to assist an inspector appointed under Part 9;

(c) to a limited liability company, if it relates to an audit of the limited liability company's accounts;

(d) that may be or is to be used for the purposes of criminal proceedings;

(e) that is a summary or collection of information that does not enable any person to whom the information relates to be identified; or

(f) that may be published under Regulation 15(11) or (18).

(7) This Regulation does not prohibit the disclosure of information that is or has been available to the public from any other source.

(8) Nothing in this Regulation authorises the making of a disclosure in contravention of the Data Protection (Jersey) Law 2018.

(9) A person who discloses information in contravention of this Regulation commits an offence and is liable to a fine and 2 years imprisonment, unless the person –

(a) did not know, and had no reason to suspect, that the information had been provided as mentioned in paragraph (1); or

(b) took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

26 Application of Part 10

(1) In Part 10, references to the affairs of a limited liability company are to be taken to include references to –

(a) the limited liability company's compliance with the accounting principles applicable to the limited liability company under this Part; and

(b) any aspect of its accounts or their auditing that raises or appears to raise important issues affecting the public interest.

(2) If a report mentioned in Regulation 112(1) is in respect of any aspect of the affairs of a limited liability company mentioned in paragraph (1)(a) or (b), the Minister or the Commission may, in addition to the persons mentioned in Regulation 112(3), forward a copy of the report to any of the following –

(a) any relevant recognised professional body;

(b) the registrar.

(3) For the purposes of, or as a consequence of, an investigation of a limited liability company being carried out or that has been carried out under Part 10, the Commission or the Minister may direct a limited liability company –

(a) to have its accounts re-audited; or

(b) to restate its accounts in respect of a specified period by a specified date and, if further directed to do so, to have them audited.

(4) If a limited liability company fails to comply with a direction given under paragraph (3) the limited liability company and each officer of the limited liability company in default commits an offence and is liable to a fine and 2 years imprisonment.

(5) Where this Regulation applies –

(a) Regulation 105(2) is taken to include the Minister and the Commission; and

(b) Regulation 105(3) must not apply to an application made by the Minister or by the Commission.

27 Disapplication of audit requirement

(1) A limited liability company that has circulated a prospectus may apply to the Commission to disapply the requirement to appoint an auditor to examine and report on accounts of the limited liability company in relation to a financial period under Regulation 11(1) if no interests in the limited liability company were issued to any person other than a person connected with the establishment or promotion of the limited liability company in that financial period and any preceding financial period, or if the Commission otherwise consents.

(2) An application to the Commission made under paragraph (1) must be made in the form specified by the Commission.

(3) An application made under paragraph (1) –

(a) must be made by LLC consent of all the members of the limited liability company and a printed copy of that LLC consent must –

(i) be embodied in or annexed to every copy of the LLC agreement issued after the LLC consent is given,

(ii) be forwarded to a member of the limited liability company at the member's request on payment of a sum (if any), not exceeding the published maximum, that the limited liability company may require, and

(iii) within 21 days after LLC consent is given, be delivered to the registrar and be recorded by the registrar; and

(b) has the effect of disapplying the requirement to appoint an auditor to examine and report on accounts of the limited liability company under Regulation 11(1) from the date that it is delivered to the registrar under sub-paragraph (a)(iii).

PART 3

PROSPECTUSES

28 Application

(1) Except as provided by paragraph (2), this Part applies to a prospectus relating to securities in a limited liability company.

(2) This Part does not apply to the issue of a document relating to a scheme intended to facilitate or to encourage the holding of securities in a limited liability company by or for the benefit of –

(a) managers or former managers of the limited liability company, the limited liability company's subsidiary or holding limited liability company, or a subsidiary of the limited liability company's holding limited liability company;

(b) the bona fide employees or former employees of the limited liability company, the limited liability company's subsidiary or holding limited liability company or a subsidiary of the limited liability company's holding limited liability company; or

(c) the spouses, civil partners, surviving spouses, surviving civil partners, minor children or minor step-children of such members or employees or former members or former employees.

29 Control of borrowing

The provisions of this Part are in addition to and do not derogate from the requirements of the Control of Borrowing (Jersey) Order 1958.

30 Circulation of prospectus

(1) A limited liability company may not circulate a prospectus unless it has appointed a manager.

(2) Subject to paragraph (4), unless the conditions in paragraph (3) are complied with –

(a) a person must not circulate a prospectus in Jersey;

(b) a limited liability company must not circulate a prospectus outside Jersey; and

(c) a limited liability company must not procure the circulation of a prospectus outside Jersey.

(3) The conditions are –

(a) the prospectus contains the information specified in Part 1 of the Schedule;

(b) the prospectus includes the statements specified in Part 2 of the Schedule;

(c) there has been delivered to the registrar –

(i) a copy of the prospectus, signed by or on behalf of all of the managers of the limited liability company,

(ii) a signed copy of any report included in or attached to the prospectus, and

(iii) any other particulars that the registrar may require; and

(d) the registrar has given consent to the circulation of the prospectus.

(4) The registrar may give consent to the circulation of a prospectus that does not comply in every respect with the conditions in paragraph (3) if the registrar is satisfied that the deviation from those requirements does not affect the substance of the prospectus and is not calculated to mislead.

31 Compensation for misleading statements in prospectus

(1) A person who acquires or agrees to acquire securities in a limited liability company to which a prospectus relates and suffers a loss in respect of the securities as a result of the inclusion in the prospectus of a statement of a material fact which is untrue or misleading, or the omission from it of the statement of a material fact, is, subject to Regulation 32, entitled to compensation –

(a) in the case of securities offered for subscription, from the limited liability company issuing the securities and from each person who was a manager of it when the prospectus was circulated;

(b) in the case of securities offered otherwise than for subscription, from the person making the offer and, where that person is a limited liability company or a body corporate, from each person who was a manager or a director of it when the prospectus was circulated;

(c) from each person who is stated in the prospectus as accepting responsibility for the prospectus, or any part of it, but, in that case, only in respect of a statement made in or omitted from that part; and

(d) from each person who has authorised the contents of, or any part of, the prospectus.

(2) Nothing in this Regulation makes a person responsible by reason only of giving advice as to the contents of a prospectus in a professional capacity.

(3) This Regulation does not affect any liability which any person may incur apart from this Regulation.

(4) This Regulation applies only to a prospectus first circulated after this Regulation comes into force.

32 Exemption from liability to pay compensation

A person is not liable under Regulation 31 if the person satisfies the Court –

(a) that the prospectus was circulated without the person's consent;

(b) that, having made such enquiries (if any) as were reasonable, from the circulation of the prospectus until the security was acquired, the person reasonably believed that the statement was true and not misleading or that the matter omitted was properly omitted;

(c) that, after the circulation of the prospectus and before the security was acquired the person, on becoming aware of the untrue or misleading statement or of the omission of the statement of a material fact, took reasonable steps to secure that a correction was brought to the notice of persons likely to acquire the security;

(d) in the case of a loss caused by a statement purporting to be made by a person whose qualifications give authority to a statement made by the person which was included in the prospectus with the person's consent, that when the prospectus was circulated the person reasonably believed that the person purporting to make the statement was competent to do so and had consented to its inclusion in the prospectus; or

(e) that the person suffering the loss acquired or agreed to acquire the security knowing that the statement was untrue or misleading or that the matter in question was omitted.

33 Recovery of compensation

(1) A person is not prohibited from obtaining compensation from a limited liability company by reason only of holding or having held a security in the limited liability company or any right to apply for a security in the limited liability company or to be included in the limited liability company's register of members.

(2) A sum due from a limited liability company to a person who has acquired or agreed to acquire a security in the limited liability company, being a sum due as compensation for loss suffered by the person in respect of the security, is to be treated (whether or not the limited liability company is being wound up and whether the sum is due under Regulation 31 or otherwise) as a sum due to the person otherwise than in the person's role as a member.

34 Criminal liability in relation to prospectuses

If a prospectus is circulated with a material statement in it which is untrue or misleading or with the omission from it of the statement of a material fact, any person who authorised the circulation of the prospectus commits an offence and is liable to a fine and 10 years imprisonment, unless the person satisfies the Court that –

(a) the person reasonably believed, when the prospectus was circulated, that the statement was true and not misleading; or

(b) that the matter omitted was properly omitted.

35 Criminal liability of officers

A person who fails to comply with any provision of this Part and, where that person is a body corporate or a body with separate legal personality, every officer of that body corporate or body with separate legal personality which is in default, commits an offence.

PART 4

TAKEOVERS

36 Takeover offers

(1) In this Part, "a takeover offer" means an offer to acquire all the LLC interests, or all the LLC interests of any class, classes or series, in a limited liability company (other than LLC interests which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the LLC interests to which the offer relates or, where those LLC interests include LLC interests of different classes or series, in relation to all the LLC interests of each class or series.

(2) In paragraph (1), "LLC interests" means LLC interests that have been allotted on the date of the offer.

(3) A takeover offer may include among the LLC interests to which it relates all or any LLC interests that are allotted after the date of the offer but before a date specified in or determined in accordance with the terms of the offer.

(4) An offer is not prevented from being a takeover offer by reason of not being made to members whose registered address is not in Jersey if –

(a) the offer was not made to those members in order not to contravene the law of a country or territory outside Jersey; and

(b) either –

(i) the offer is published in the Jersey Gazette, or

(ii) a document containing the terms of the offer can be inspected, or a copy of it obtained, at a place in Jersey or on a website, and a notice is published in the Jersey Gazette specifying the address of that place or website.

(5) Where an offer is made to acquire LLC interests in a limited liability company and there are persons for whom, by reason of the law of a country or territory outside Jersey, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer.

(6) It is not to be inferred –

(a) that an offer which is not made to every holder of LLC interests, or every holder of LLC interests of any class, classes or series, in the limited liability company cannot be a takeover offer unless the requirements of paragraph (4) are met; or

(b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer unless the reason for the impossibility or difficulty is the one mentioned in paragraph (5).

(7) The terms offered in relation to any LLC interests must for the purposes of this Regulation be treated as being the same in relation to all the LLC interests or, as the

case may be, all the LLC interests of a class, classes or series to which the offer relates notwithstanding any variation permitted by paragraph (8).

(8) A variation is permitted by this paragraph where –

(a) the law of a country or territory outside Jersey precludes the acceptance of an offer in the form or any of the forms specified or precludes it except after compliance by the offeror with conditions with which the offeror is unable to comply or which the offeror regards as unduly onerous; and

(b) the variation is such that the persons by whom the acceptance of an offer in that form is precluded are able to accept an offer otherwise than in that form but of substantially equivalent value.

(9) The reference in paragraph (1) to LLC interests already held by the offeror includes a reference to LLC interests which the offeror has contracted to acquire but that is not to be construed as including LLC interests which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder for nothing other than a promise by the offeror to make the offer.

(10) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision is not regarded for the purposes of this Part as the making of a fresh offer and references in this Part to the date of the offer must accordingly be construed as references to the date on which the original offer was made.

(11) In this Part, "offeror" means, subject to Regulation 42, the person making a takeover offer and "limited liability company" means the limited liability company whose LLC interests are the subject of the offer.

37 Right of offeror to buy out minority LLC interest holders

(1) In a case in which a takeover offer does not relate to LLC interests of different classes or series, the offeror may give notice, to the holder of any LLC interests to which the offer relates which the offeror has not acquired or contracted to acquire, that the offeror desires to acquire those LLC interests if the condition in paragraph (2) is met.

(2) The condition is that the offeror has, by virtue of acceptances of the offer, acquired or contracted to acquire not less than 9/10ths in value of the LLC interests to which the offer relates.

(3) In a case in which a takeover offer relates to LLC interests of different classes or series, the offeror may give notice to the holder of any LLC interests of a class or series which the offeror has not acquired or contracted to acquire, that the offeror desires to acquire those LLC interests if the condition in paragraph (4) is met.

(4) The condition is that the offeror has, by virtue of acceptances of the offer, acquired or contracted to acquire to not less than 9/10ths in value of the LLC interests of that class or series to which the offer relates.

(5) An offeror must not give notice under paragraph (1) or (3) unless –

(a) before the end of the period of 4 months beginning with the date of the offer, the offeror has acquired or contracted to acquire the LLC interests necessary to satisfy the minimum specified in paragraph (2) or (4); and

(b) no more than 2 months have passed after the date on which the offeror acquired or contracted to acquire the LLC interests necessary to satisfy that minimum.

(6) When the offeror gives the first notice in relation to an offer, the offeror must send a copy of it to the limited liability company together with a declaration by the offeror that the conditions for the giving of the notice are satisfied.

(7) Where the offeror is a body corporate or a limited liability company the declaration must be signed by a director or manager.

(8) Any person who fails to send a copy of a notice or a declaration as required by paragraph (6) or makes such a declaration for the purposes of that paragraph knowing it to be false or without having reasonable grounds for believing it to be true commits an offence and is liable to 2 years imprisonment or a fine, or both.

(9) If a person is charged with any offence for failing to send a copy of a notice as required by paragraph (6) it is a defence for the person to prove that the person took reasonable steps for securing compliance with that paragraph.

(10) Where during the period within which a takeover offer can be accepted the offeror acquires or contracts to acquire any of the LLC interests to which the offer relates otherwise than by virtue of acceptances of the offer, if –

(a) the value for which they are acquired or contracted to be acquired (the "acquisition value") does not at that time exceed the value which is receivable by an acceptor under the terms of the offer; or

(b) the terms of the offer are subsequently revised so that when the revision is announced the acquisition value, at the time mentioned in sub-paragraph (a), no longer exceeds the value which is receivable by an acceptor under those terms,

the offeror is treated for the purposes of this Regulation as having acquired or contracted to acquire those LLC interests by virtue of acceptances of the offer and in any other case those LLC interests are treated as excluded from those to which the offer relates.

38 Effect of notice under Regulation 37

(1) Subject to Regulation 41, this Regulation has effect where a notice is given in respect of any LLC interests under Regulation 37.[3]

(2) The offeror is entitled and bound to acquire those LLC interests on the terms of the offer.

(3) Where the terms of an offer give the holder of any LLC interests a choice of payment for the holder's LLC interests, the notice must give particulars of the choice and state –

(a) that the holder of the LLC interests may within 6 weeks from the date of the notice indicate the holder's choice by a written communication sent to the offeror at an address specified in the notice; and

(b) which payment specified in the offer is to be taken as applying if the holder does not indicate a choice.

(4) Paragraph (3) applies whether or not any time limit or other conditions applicable to the choice under the terms of the offer can still be complied with, and the payment is taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the chosen payment if the payment chosen by the holder of the LLC interests –

(a) is not cash and the offeror is no longer able to make that payment; or

(b) was to have been made by a third party who is no longer bound or able to make that payment.

(5) At the end of 6 weeks from the date of the notice the offeror must –

(a) send a copy of the notice to the limited liability company; and

(b) make payment to the limited liability company for the LLC interests to which the notice relates.

(6) The copy of the notice sent to the limited liability company under paragraph (5)(a) must be accompanied by an instrument of transfer executed on behalf of the LLC interest holder by a person appointed by the offeror, and on receipt of that instrument the limited liability company must register the offeror as the holder of those LLC interests.

(7) Where the payment referred to in paragraph (5)(b) is to be made in LLC interests, shares or securities to be allotted or issued by the offeror, the reference in that paragraph to the making of payment is construed as a reference to the allotment or issue of the LLC interests, shares or securities to the limited liability company.

(8) Any sum received by a limited liability company under paragraph (5)(b), and any other payment received under that paragraph must be held by the limited liability company on trust for the person entitled to the LLC interests in respect of which the sum or other payment was received.

(9) Any sum received by a limited liability company under paragraph (5)(b) and any distribution or other sum accruing from any other payment received by a limited liability company under that paragraph, must be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(10) Where after reasonable enquiry made at reasonable intervals the person entitled to any sum or other payment held on trust under paragraph (8) cannot be found and 10 years have elapsed since the sum or other payment was received or the limited liability company is wound up, the sum or other payment (together with any interest, dividend or other benefit that has accrued from it) must be paid to the Viscount.

(11) The expenses of any enquiry under paragraph (10) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

39 Right of minority LLC interest holder to be bought out by offeror

(1) The holder of any LLC interests to which an offer relates who has not accepted the offer may by a written communication addressed to the offeror require the offeror to acquire those LLC interests if –

(a) a takeover offer relates to all the LLC interests in a limited liability company; and

(b) at any time before the end of the period within which the offer can be accepted –

(i) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the LLC interests to which the offer relates, and

(ii) those LLC interests (with or without any other LLC interests in the limited liability company which the offeror has acquired or contracted to acquire) amount to not less than 9/10ths in value of all the LLC interests in the limited liability company.

(2) If a takeover related to LLC interests of any class, classes or series, the holder of any LLC interests of that class or series who has not accepted the offer may by a written communication addressed to the offeror require the offeror to acquire those LLC interests if at any time before the end of the period within which the offer can be accepted –

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the LLC interests of any class or series to which the offer relates; and

(b) those LLC interests (with or without any other LLC interests in the limited liability company which the offeror has acquired or contracted to acquire) amount to not less than 9/10ths in value of all the LLC interests of that class or series in the limited liability company.

(3) No later than one month of the time specified in paragraph (1) or(2) –

(a) the offeror must give any LLC interest holder who has not accepted the offer notice of the rights that are exercisable by the LLC interest holder under that paragraph, and

(b) if the notice is given before the end of the period mentioned in that paragraph, it must state that the offer is still open for acceptance.

(4) A notice under paragraph (3) may specify a period for the exercise of the rights conferred by this Regulation and in that event the rights are not exercisable after the end of that period, but the period must not end less than 3 months after the end of the period within which the offer can be accepted.

(5) Paragraph (3) does not apply if the offeror has given the LLC interest holder a notice in respect of the LLC interests in question under Regulation 37.

(6) If the offeror fails to comply with paragraph (3), the offeror and, if the offeror is a company or a limited liability company, every officer of the company or limited liability company who is in default or to whose neglect the failure is attributable, commits an offence.

(7) If an offeror other than a company or a limited liability company is charged with an offence for failing to comply with paragraph (3), it is a defence for the offeror to prove that the offeror took all reasonable steps for securing compliance with that paragraph.

40 Effect of requirement under Regulation 39

(1) Subject to Regulation 41, this Regulation has effect where an LLC interest holder exercises the LLC interest holder's rights in respect of any LLC interests under Regulation 39.

(2) The offeror is entitled and bound to acquire those LLC interests on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the holder of LLC interests a choice of payment for the holder's LLC interests, the holder of the LLC interests may indicate the LLC interest holder's choice when requiring the offeror to acquire them and the notice given to the holder under Regulation 39(3) –

(a) must give particulars of the choice and of the rights conferred by this paragraph; and

(b) may state which payment specified in the offer is to be taken as applying if the holder does not indicate a choice.[4]

(4) Paragraph (3) applies whether or not any time limit or other conditions applicable to the choice under the terms of the offer can still be complied with, and the payment is taken to consist of an amount of cash payable by the offeror which at the date when the holder of the LLC interests requires the offeror to acquire them is equivalent to the chosen payment if the payment chosen by the holder of the LLC interests –

(a) is not cash and the offeror is no longer able to make that payment; or

(b) was to have been made by a third party who is no longer bound or able to make that payment.

41 Applications to the Court

(1) Where a notice is given under Regulation 37 to the holder of any LLC interests the Court may, on an application made by the LLC interest holder within 6 weeks from the date on which the notice was given –

(a) order that the offeror is not entitled and bound to acquire the LLC interests; or

(b) specify terms of acquisition different from those of the offer.

(2) If an application to the Court under paragraph (1) is pending at the end of the period mentioned in Regulation 38(5) that paragraph does not have effect until the application has been disposed of.

(3) Where the holder of any LLC interests exercises the LLC interest holder's rights under Regulation 39 the Court may, on an application made by the LLC interest holder or the offeror, order that the terms on which the offeror is entitled and bound to acquire the LLC interests are as the Court thinks fit.

(4) No order for costs or expenses must be made against an LLC interest holder making an application under paragraph (1) or (3) unless the Court considers –

(a) that the application was unnecessary, improper or vexatious; or

(b) that there has been unreasonable delay in making the application or unreasonable conduct on the LLC interest holder's part in conducting the proceedings on the application.

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under Regulation 37(1) or (3), the Court may, on the application of the offeror, make an order authorising the offeror to give notices under that Regulation if satisfied –

(a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding LLC interests to which the offer relates;

(b) that the LLC interests which the offeror has acquired or contracted to acquire by virtue of acceptances of the offer, together with the LLC interests held by the person or persons mentioned in sub-paragraph (a), amount to not less than the minimum specified in that Regulation; and

(c) that the terms offered are fair and reasonable.

(6) The Court must not make an order under paragraph (5) unless it considers that it is just and equitable to do so having regard, in particular, to the number of LLC interest holders who have been traced but who have not accepted the offer.

42 Joint offers

(1) A takeover offer may be made by 2 or more persons jointly and in that event this Part has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by Regulations 37 and 39 are satisfied by the joint offerors acquiring or contracting to acquire the necessary LLC interests jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases).

(3) Subject to this Regulation, the rights and obligations of the offeror under Regulations 37, 39 and 40 are respectively joint rights and joint and several obligations of the joint offerors.[5]

(4) It is sufficient compliance with any provision of any Regulation requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them.

(5) In Regulations 37, 38(7) and 40, references to the offeror are references to the joint offerors or any of the offerors.

(6) In Regulation 38(6), references to the offeror are references to the joint offerors or such of them as they may determine.

(7) In Regulation 38(4)(a) and 40(4)(a), references to the offeror being no longer able to make the relevant payment are references to none of the joint offerors being able to do so.

(8) In Regulation 41 references to the offeror are to be construed as references to the joint offerors except that any application under Regulation 41(3) or (5) may be made by any of them and the reference in Regulation 41(5)(a) to the offeror having been unable to trace one or more of the persons holding LLC interests are to be construed as a reference to none of the offerors having been able to do so.

43 Associates

(1) The requirement in Regulation 36(1) that a takeover offer must extend to all the LLC interests, or all the LLC interests of any class, classes or series, in a limited liability company is to be regarded as satisfied despite that the offer does not extend to LLC interests which associates of the offeror hold or have contracted to acquire; and, subject to paragraph (2), LLC interests which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, are disregarded for the purposes of any reference in this Part to the LLC interests to which a takeover offer relates.

(2) If during the period within which a takeover offer can be accepted any associate of the offeror acquires or contracts to acquire any of the LLC interests to which the offer relates, the associate must be treated for the purpose of that Regulation as LLC interests to which the offer relates.

(3) In Regulation 39(1)(b) and (2)(b), the reference to LLC interests which the offeror has acquired or contracted to acquire include a reference to LLC interests which any associate of the offeror has acquired or contracted to acquire.

(4) In this Regulation, "associate", in relation to an offeror, means –

(a) a nominee of the offeror;

(b) a holding company or holding limited liability company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company or holding limited liability company, subsidiary or fellow subsidiary; or

(c) a body corporate or limited liability company in which the offeror is substantially interested.

(5) For the purposes of paragraph (4)(b) a body corporate or limited liability company is a fellow subsidiary of another body corporate or limited liability company if both are subsidiaries of the same body corporate or limited liability company but neither is a subsidiary of the other.

(6) For the purposes of paragraph (4)(c) an offeror has a substantial interest in a body corporate or limited liability company if –

(a) that body or its directors or managers are accustomed to act in accordance with the offeror's directions or instructions; or

(b) the offeror is entitled to exercise or control the exercise of one-third or more of the voting power at meetings of that body.

(7) Where the offeror is an individual, the offeror's associates also include the spouse or civil partner and any minor child or step-child of the offeror.

44 Convertible securities

(1) For the purposes of this Part, securities of a limited liability company are treated as LLC interests in the limited liability company if they are convertible into or entitle the holder to subscribe for such LLC interests and references to the holder of LLC interests or an LLC interest holder are construed accordingly.

(2) Paragraph (1) is not to be construed as requiring any securities to be treated –

(a) as LLC interests of the same class or series as those into which they are convertible or for which the holder is entitled to subscribe; or

(b) as LLC interests of the same class or series as other securities by reason only that the LLC interests into which they are convertible or for which the holder is entitled to subscribe are of the same class or series.

PART 5

COMPROMISES AND ARRANGEMENTS

45 Power of limited liability company to compromise or arrange with creditors and members

(1) Where a compromise or arrangement is proposed between a limited liability company and its creditors, or a class of them, or between the limited liability company and its members, or a class or series of them, the Court may on the application of the limited liability company or a creditor or member of it or, in the case of a limited liability company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the limited liability company or class or series of members (as the case may be), to be called in a manner the Court directs.

(2) Paragraph (3) applies if a compromise or arrangement is agreed by a majority, present and voting either in person or by proxy at the meeting, representing –

(a) 3/4ths in value of the creditors or class of creditors; or

(b) 3/4ths of the voting rights of the members or class or series of members.

(3) The compromise or arrangement, if sanctioned by order of the Court, is binding on –

(a) all creditors or the class of creditors; or

(b) all the members or class or series of members.

(4) In the case of a limited liability company in the course of being wound up, a compromise or arrangement sanctioned by order of the Court is also binding on the liquidator and contributories of the limited liability company.

(5) An order by the Court under paragraph (3) has no effect until the relevant act of court has been delivered to the registrar for registration, and the relevant act of court must be –

(a) annexed to every copy of the limited liability company's LLC agreement issued after the order has been made; or

(b) held at the registered office if there is no written LLC agreement.

(6) A limited liability company that fails to comply with paragraph (5), commits an offence and is liable to a fine of level 3 on the standard scale.

46 Information as to compromise or arrangement to be circulated

(1) This Regulation applies where a meeting of creditors or a class of creditors, or of members or a class or series of members, is called under Regulation 45.

(2) With the notice calling the meeting which is given to a creditor or member there must be included a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the managers of the limited liability company (whether as managers or as creditors or as members of the limited liability company or otherwise) and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the same interests of other persons.

(3) In every notice calling the meeting which is given by advertisement there must be included either a statement mentioned in paragraph (2) or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(4) Where the compromise or arrangement affects the rights of debenture holders of the limited liability company, the statement must give the same explanation as respects the trustees of a deed for securing the issue of the debentures as it is required to give as respects the limited liability company's managers.

(5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member must, on making application in the manner indicated by the notice, be furnished by the limited liability company free of charge with a copy of the statement.

(6) If a limited liability company fails to comply with a requirement of this Regulation the limited liability company and every manager of it who is in default commits an offence and is liable to a fine of level 3 on the standard scale.

(7) For purpose of paragraph (6), a trustee of a deed for securing the issue of debentures of the limited liability company is deemed a manager of it

(8) A person is not liable under paragraph (6) if the person shows that the default was due to the refusal of another person, being a manager or trustee for debenture holders, to supply the necessary particulars of the person's interests.

(9) A manager of the limited liability company, and a trustee for its debenture holders, must give notice to the limited liability company of such matters relating to the person as may be necessary for the purposes of this Regulation, and a person who defaults in complying with this paragraph commits an offence and is liable to a fine of level 3 on the standard scale.[6]

47 Provisions for facilitating limited liability company reconstruction or amalgamation

(1) This Regulation applies if an application is made to the Court under Regulation 45 for the sanctioning of a compromise or arrangement proposed between a limited liability company and any persons mentioned in that Regulation.

(2) The Court may make provision for all or any of the matters set out in paragraph (3) if it is shown –

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of one or more limited liability companies, or the amalgamation of 2 or more limited liability companies or bodies corporate; and

(b) that under the scheme the whole or part of the undertaking or the property of a limited liability company concerned in the scheme ("a transferor limited liability company") is to be transferred to another body corporate or limited liability company ("the transferee body").

(3) The matters are –

(a) the transfer to the transferee body of the whole or part of the undertaking and of the property or liabilities of a transferor limited liability company;

(b) the allotting or appropriation by the transferee body of LLC interests, shares, debentures, policies or other similar interests in the transferee body which under the compromise or arrangement are to be allotted or appropriated by the transferor limited liability company to or for any person;

(c) the continuation by or against the transferee body of legal proceedings pending by or against a transferor limited liability company;

(d) the dissolution, without winding up, of a transferor limited liability company;

(e) the provision to be made for persons who, within a time and in a manner which the Court directs, dissent from the compromise or arrangement; and

(f) any incidental, consequential and supplemental matters that are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(4) If an order of the Court under this Regulation provides for the transfer of property or liabilities, then –

(a) that property is by virtue of the order transferred to, and vests in, the transferee body;

(b) those liabilities are, by virtue of the order, transferred to and become liabilities of that transferee body; and

(c) if the order so directs, property vests freed from any hypothec, security interest or other charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(5) If an order of the Court is made under this Regulation, every limited liability company in relation to which the order is made must deliver the relevant act of court to the registrar for registration within 14 days after the making of the order, and in the event of failure to comply with this paragraph, the limited liability company commits an offence and is liable to a fine of level 3 on the standard scale and a fine of level 2 on the standard scale for each day during which the offence continues.

PART 6

MERGERS

48 Interpretation of Part 6

(1) In this Part –

"merged body" means the body resulting from a merger under Regulation 50 (and "merged limited liability company" is to be read accordingly);

"merger agreement" means an agreement under Regulation 51;

"merging body" means a body that is seeking to merge with another body under this Part (and "merging limited liability company" is to be read accordingly);

"new body" means a merged body that is new within the meaning of Regulation 50(2) (and "new limited liability company" is to be read accordingly);

"overseas body" means a body registered in a jurisdiction outside Jersey;

"survivor body" means a merging body that becomes a merged body as provided for in Regulation 50(1)(a) (and "survivor limited liability company" is to be read accordingly).

(2) Nothing in this Part is to be read as preventing –

(a) more than one person from signing the same certificate under this Part; or

(b) more than one certificate signed under this Part from being included in the same document.

(3) References to a certificate are to be construed in accordance with paragraph (2).

49 Bodies eligible to merge

Subject to the requirements of this Part, a limited liability company may merge with another limited liability company or any of the following bodies –

(a) a body, other than a limited liability company, that is incorporated or registered in Jersey under an enactment under which it is permitted to merge with a limited liability company;

(b) an overseas body that –

(i) is a limited liability body or a body corporate that is not a cell company or cell and does not have unlimited shares or guarantor members, and

(ii) to the reasonable satisfaction of the Commission, is not prohibited, under the law of the jurisdiction in which it is incorporated or registered, from merging with a limited liability company.

50 Bodies eligible to be merged bodies

(1) The result of a merger under this Part is that the merging bodies continue as a single merged body, and that body is either –

(a) one of the merging bodies; or

(b) a new body that –

(i) is a limited liability company,

(ii) is incorporated or registered in Jersey under the same enactment as one of the merging bodies, or

(iii) is an overseas body that is incorporated or registered under the law of the same jurisdiction as one of the merging bodies and to which Regulation 49(b) applies.

(2) For the purpose of this Part, a merged body is new if it is created by the merger from which it results.

51 Merger agreement

(1) Each limited liability company proposing to merge must, in order to do so, enter into an agreement in writing (a "merger agreement") with each body with which it proposes to merge.

(2) The merger agreement must state the terms and means of effecting the merger and, in particular, the following information –

(a) details of the proposed merged body, including –

(i) whether it is to be a survivor body or a new body,

(ii) whether it is to be a limited liability company, an overseas body or some other body, and

(iii) the names and addresses of the persons proposed to be its managers, or, if a manager is not to be appointed, its members;

(b) details of any arrangements necessary to complete the merger and to provide for the management of the merged body;

(c) details of any payment, other than of a kind described in paragraph (3), proposed to be made to a member or manager of a merging limited liability company or to a person having a similar relationship to a merging body that is not a limited liability company; and

(d) in relation to any LLC interests in a merging limited liability company, the information specified in paragraph (3).

(3) The information referred to in paragraph (2)(d) is –

(a) if the LLC interests and other securities are to be converted into securities of the merged body, the manner in which that conversion is to be done; or

(b) otherwise, what the holders are to receive instead and the manner in which and the time at which they are to receive it.

(4) If the merged body is to be a new limited liability company, the merger agreement must also set out –

(a) the proposed LLC agreement of the merged limited liability company; and

(b) a draft of any other document or information that would be required under the Law to be delivered to the registrar if the merged limited liability company were formed under the Law otherwise than by merger.

(5) If the merged body is to be a survivor limited liability company, the merger agreement must also state –

(a) whether any amendments to the LLC agreement are proposed to take effect on the merger, with details of those amendments; and

(b) whether it is proposed that, on the merger, any person will become, or cease to be a member or manager of the limited liability company, with the name and address of each such person.

(6) A merger agreement may provide that, at any time before the completion of the merger, the agreement may be terminated by –

(a) any one or more of the merging limited liability companies, even if LLC consent has been granted by the members of all or any of those limited liability companies; or

(b) any of the merging bodies that are not limited liability companies.

(7) If an agreement is terminated under a provision included in it under paragraph (6), nothing in this Part requires or authorises any further steps to be taken to complete the merger.

52 LLC consents and certificates

(1) Before notice is given of a meeting of a merging limited liability company to approve a merger agreement under Regulation 53, or to approve a merger under Regulation 54, the managers of that limited liability company must give an LLC consent stating that, in the opinion of the managers, the merger is in the best interests of the limited liability company.

(2) For the purposes of this Regulation a solvency statement is a statement that, having made full inquiry into the affairs of the limited liability company, the person making the statement reasonably believes that the limited liability company is, and will remain until the merger is completed, able to discharge its liabilities as they fall due.

(3) If the managers giving the LLC consent are satisfied on reasonable grounds that they can properly make a solvency statement in respect of the limited liability company, the LLC consent must in addition state that they are so satisfied.

(4) If paragraph (3) does not apply –

(a) the LLC consent must instead state that the managers voting for it are satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the Court under Regulation 57; and

(b) the limited liability company must, as soon as is practicable after the LLC consent is given, inform the other merging bodies that paragraph (3) does not apply.

(5) After LLC consent is given under paragraph (1), but before notice is given as mentioned in that paragraph, each manager who voted in favour of it must sign a certificate –

(a) containing –

(i) if paragraph (3) applies, a solvency statement, or

(ii) if paragraph (3) does not apply, a statement that the manager is satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the Court under Regulation 57; and

(b) setting out the grounds for that statement.

(6) Before notice is given as mentioned in paragraph (1), each person falling within paragraph (7) must sign a certificate stating –

(a) that, in their opinion, the merged body will be able to continue to carry on business and discharge its liabilities as they fall due –

(i) on and immediately after the completion of the merger, and

(ii) for the 12 months immediately following the signing of the certificate; and

(b) the grounds for that opinion, having particular regard to –

(i) the prospects of the merged body,

(ii) the proposals in the merger agreement with respect to the management of the merged body's business, or any proposals in the LLC consents under Regulation 54 with respect to that matter, and

(iii) the amount and character of the financial resources that will, in the view of the person signing, be available to the merged body.

(7) The persons falling within this paragraph are –

(a) the persons proposed in the merger agreement, or in an LLC consent under Regulation 54 –

(i) to be managers of the merged body, or

(ii) to manage the merged body, if it is to be a body that does not have a manager; and

(b) if none of the managers of the merging limited liability companies is a person referred to in sub-paragraph (a), each person who must sign a certificate under paragraph (5).

53 LLC consent to merger agreement

(1) The managers of each merging limited liability company must submit the merger agreement for approval by LLC consent of the members of that limited liability company, and, where there is more than one class or series of members, for approval by LLC consent of each class or series.

(2) Prior to giving LLC consent, the managers must give members –

(a) a copy or summary of the merger agreement;

(b) copies of the proposed constitutional documents for the merged body, or a summary of the principal provisions of those documents;

(c) if a summary is supplied under sub-paragraph (a) or (b), information as to how a copy of the document summarised may be inspected by members;

(d) copies of the certificates signed under Regulation 52(5) and (6) in respect of that limited liability company, and a copy of any information that may have been provided, by the date that documents are provided under this paragraph, to that limited liability company by any other merging limited liability company under Regulation 52(4)(b);

(e) a statement of the material interests in the merger of the managers of each merging body, and of the persons managing any merging body that does not have managers; and

(f) such further information as a member would reasonably require to reach an informed decision on the merger;

(g) sufficient information to alert members to their right to apply to the Court under Regulation 55.

(3) A merger is approved under this Regulation when all of the LLC consents referred to in paragraph (1) have been passed in respect of all of the merging bodies that are limited liability companies.

(4) A merger may not be completed unless it is approved under this Regulation, or under Regulation 54.

54 Simplified approval of mergers involving subsidiaries

(1) A holding limited liability company merger or an inter-subsidiary merger may be approved by LLC consent of the members of each merging limited liability company under this Regulation, without an approved merger agreement.

(2) For the purpose of this Regulation, a holding limited liability company merger is a merger in which –

(a) the merging bodies are –

(i) a limited liability company that is a holding limited liability company, and

(ii) one or more other limited liability companies that are its wholly-owned subsidiaries; and

(b) the merged body is the holding limited liability company, continuing as a survivor limited liability company.

(3) For a holding limited liability company merger –

(a) each LLC consent given by the members of a merging subsidiary must provide that its LLC interests are to be cancelled without any repayment of capital; and

(b) the LLC consent given by the members of the holding limited liability company must –

(i) provide that the capital accounts of each merging subsidiary are to be added to the capital accounts of the holding limited liability company,

(ii) provide that no LLC interests are to be issued and no assets distributed by it in connection with the merger (whether before, on or after the merger),

(iii) specify any changes to its LLC agreement that are to take effect on the merger, and

(iv) state the names and addresses of the persons who are proposed to be the members and manager, if relevant, after the merger.

(4) For the purpose of this Regulation, an inter-subsidiary merger is a merger in which –

(a) the merging bodies are all limited liability companies that are wholly-owned subsidiaries of the same holding body (whether that holding body is incorporated or registered in Jersey or elsewhere); and

(b) the merged body is one of the merging limited liability companies, continuing as a survivor limited liability company.

(5) For an inter-subsidiary merger –

(a) each LLC consent given by the members of a merging limited liability company, other than the survivor limited liability company, must provide that –

(i) its LLC interests are to be cancelled without any repayment of capital, and

(ii) its capital accounts are to be added to the capital accounts of the survivor limited liability company; and

(b) the LLC consent given by the members of the survivor limited liability company must –

(i) provide that the capital accounts of each other merging limited liability company are to be added to the capital accounts of the survivor limited liability company,

(ii) specify any changes to the LLC agreement of the survivor limited liability company that are to take effect on the merger, and

(iii) state the names and addresses of the persons who are proposed to be the managers of the survivor limited liability company after the merger.

(6) A merger is approved under this Regulation when all of the merging limited liability companies have given the LLC consents required by this Regulation.

(7) In relation to a merger approved under this Regulation –

(a) Regulations 55, 57 and 58 do not apply; and

(b) the other Regulations in this Part apply to the extent that they apply to a merger between limited liability companies of which one is a survivor.

55 Objection by member

(1) A member of a merging limited liability company may apply to the Court for an order under Regulation 117 on the ground that the merger would unfairly prejudice the interests of the member.

(2) An application may not be made –

(a) more than 21 days after the merger is approved under Regulation 53(3); or

(b) by a member who voted in favour of the merger under either of those Regulations.

56 Notice to creditors

(1) During the period beginning with the date on which the first notice is given as mentioned in Regulation 52 in relation to a merger and ending 21 days after the merger is approved under Regulation 53(3), each merging limited liability company must send written notice to each of its creditors who, after its members have made reasonable enquiries, is known to the managers to have a claim against the limited liability company exceeding £5,000.

(2) No later than 21 days after a merger is approved under Regulation 54(6), each merging limited liability company must send written notice to each of its creditors

who, after its members have made reasonable enquiries, is known to the managers to have a claim against the limited liability company exceeding £5,000.

(3) The notice must state –

(a) that the limited liability company intends to merge, in accordance with this Part, with one or more bodies specified in the notice; and

(b) that the merger agreement, or the limited liability company's LLC consent given under Regulation 54, is available to creditors from the limited liability company, free of charge, on request.

(4) If Regulation 57 applies to the merger, the notice must state (in addition to the matters specified in paragraph (2)) –

(a) state that a merging limited liability company has applied or will apply for the permission of the Court under that Regulation;

(b) state that any creditor of any of the merging bodies may request the limited liability company making the application to send a copy of the application to the creditor; and

(c) set out information as to –

(i) a means by which a creditor may contact the limited liability company making the application, or a person representing it in that application, and

(ii) the effect of Regulation 57(4), including the date of the application if known at the time of the notice.

(5) If regulation 58 applies to the merger, the notice must state (in addition to the matters in paragraph (2)) that any creditor of the limited liability company may –

(a) object to the merger under Regulation 58(2)(a); or

(b) require the limited liability company to notify the creditor if any other creditor of the limited liability company applies to the Court under Regulation 58(2)(b).

(6) The limited liability company must, within the time limit set out in paragraph (7), publish the contents of the notice –

(a) once in a newspaper circulating in Jersey; or

(b) in any other manner –

(i) approved by the registrar, and

(ii) published by the Commission.

(7) The time limit is whichever is the sooner of –

(a) 21 days after the merger is approved under Regulation 53(3) or 54(6); or

(b) as soon as practicable after the limited liability company sends the last of any notices under paragraph (1) or (2).

57 Limited liability company to apply to Court if solvency statement not made

(1) This Regulation applies to a merger if any certificate signed by a manager of any of the merging limited liability companies under Regulation 52(5) does not contain a solvency statement for the purpose of that Regulation.

(2) The merger may not be completed unless an act of court has been obtained permitting the merger on the ground that the merger would not be unfairly prejudicial to the interests of any creditor of any of the merging bodies.

(3) A merging limited liability company to which a certificate mentioned in paragraph (1) relates, or all such limited liability companies jointly if there is more than one, must as soon as is practicable after the merger is approved under Regulation 53(3) –

(a) apply to the Court for an act permitting the merger under paragraph (2); and

(b) send a copy of that application –

(i) to any creditor who, after the managers have made reasonable enquiries, is known to the managers to have a claim against any of the merging bodies exceeding the amount specified in Regulation 56(1),

(ii) to any other creditor of any of the merging bodies who requests a copy from that limited liability company, and

(iii) to the registrar.

(4) The Court may not hear the application for at least 21 days after it is made to the Court.

58 Objection by creditor if all solvency statements made

(1) This Regulation applies to a merger to which Regulation 57 does not apply.

(2) A creditor of a merging limited liability company who objects to the merger –

(a) may, within 21 days after the date of the publication of the notice under Regulation 56(6), give notice of the creditor's objection to the limited liability company; and

(b) may, within 21 days after the date of the notice of objection, if the creditor's claim against the limited liability company has not been discharged, apply to the Court for an order restraining the merger or modifying the merger agreement.

(3) If a creditor makes an application under paragraph (2)(b), the limited liability company must, within a reasonable time after receiving a copy of the application, send a copy of it to each other creditor –

(a) to whom a notice was sent under Regulation 56(1);

(b) who has required a copy of the application under Regulation 56(4)(b);

(c) who has given notice of objection under paragraph (2)(a); or

(d) to whom the Court orders that a copy should be sent.

(4) If on an application under paragraph (2)(b) the Court is satisfied that the merger would unfairly prejudice the interests of the applicant, or of any other creditor of the limited liability company, the Court may make an order in relation to the merger, including an order –

(a) restraining the merger; or

(b) modifying the merger agreement in a manner specified in the order.

(5) Paragraph (6) applies if the Court is considering making an order under paragraph (4)(b) to modify a merger agreement that does not contain a provision in accordance with Regulation 51(6) allowing each of the merging bodies to terminate the merger following the modification.

(6) The Court must not make the order unless –

(a) the order also inserts such a provision in the agreement; and

(b) the Court is satisfied that each merging body will have an adequate opportunity to reconsider whether to proceed with the merger following the modification.

(7) If a merger is approved under Regulation 54, references in this Regulation to the merger agreement are to be read as references to the LLC consent given under Regulation 54.

59 Authorisation of Commission required for mergers involving bodies other than limited liability companies

(1) If any of the merging bodies is not a limited liability company –

(a) the merging bodies must apply jointly, in the published form and manner (if any), to the Commission for its authorisation of the merger; and

(b) the merger must not be completed unless the Commission gives consent and any conditions attached to the authorisation are complied with.

(2) The application for authorisation may not be made until after the date of the last publication of a notice under Regulation 56(6).

(3) The application must be accompanied by –

(a) a copy of the merger agreement and the LLC consents given under Regulation 53;

(b) a copy, in respect of each merging limited liability company, of –

(i) the LLC consent given under Regulation 52(1), together with, if that information is not contained in the LLC consent, a list identifying the managers who voted in favour of that LLC consent, and

(ii) the certificates signed under Regulation 52(5) and (6);

(c) a copy, in respect of each merging limited liability company, of the notice to creditors under Regulation 56, with the date of its publication under Regulation 56(6); and

(d) information, as at the time of the application under this Regulation, as to –

(i) any application made by a member to the Court under Regulation 55, or

(ii) if no such application has been made to the Court, the date on which the time for doing so has elapsed or will elapse.

(4) If Regulation 57 applies to the merger –

(a) the application under this Regulation must in addition be accompanied by information, as at the time of that application, as to the application made, or to be made, to the Court under Regulation 57; and

(b) the applicants must –

(i) keep the Commission informed of the progress of the application under that Regulation, and

(ii) provide, when available, a copy of the act of court permitting the merger.

(5) If Regulation 57 does not apply to the merger, the application must in addition be accompanied by –

(a) information, as at the time of the application under this Regulation, as to –

(i) any notice of objection given by a creditor under Regulation 58(2)(a), or

(ii) if no such notice has been given, the date on which the time for doing so has elapsed or will elapse; and

(b) evidence satisfactory to the Commission that the merger would not be unfairly prejudicial to the interests of any creditor of any of the merging bodies.

(6) If the merged body is to be a limited liability company –

(a) the application must in addition be accompanied by –

(i) the consents of its proposed managers to act as such, and

(ii) a copy of its proposed LLC agreement, unless it is to be a survivor limited liability company without any amendment to its LLC agreement; and

(b) the Commission must inform the registrar of the name proposed for the merged limited liability company in the merger agreement, and the registrar must then inform the Commission whether that name is in the registrar's opinion in any way misleading or otherwise undesirable.

(7) If one or more of the merging bodies is an overseas body, the application must in addition be accompanied by evidence satisfactory to the Commission, in respect of each overseas body, that –

(a) the laws of the jurisdiction in which the overseas body is incorporated or registered do not prohibit either or both of –

(i) the proposed merger, or

(ii) if the merged body is to be a new body incorporated or registered in that jurisdiction, the incorporation or registration of that body as a result of that merger;

(b) if those laws or the constitution of the overseas body require that an authorisation be given for the application or for the merger, the authorisation has been given; and

(c) if the overseas body is not to be a survivor body, the overseas body will, in due course after completion of the merger, cease to be a body registered under the law of the jurisdiction in which it is presently registered.

(8) If the merged body is to be an overseas body, the application must, in addition, be accompanied by evidence satisfactory to the Commission that the laws of the jurisdiction in which the merged body is to be incorporated or registered provide that upon the merger –

(a) the property and rights to which the merging bodies were entitled immediately before the merger will become the property and rights of the merged body;

(b) the merged body will become subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which the merging bodies were subject immediately before the merger; and

(c) any actions and other legal proceedings that, immediately before the merger, were pending by or against any of the merging bodies may be continued by or against the merged body.

(9) In paragraphs (10), (11) and (12) "objection" means –

(a) the making by a member of an application to the Court under Regulation 55 in respect of any merging limited liability company; and

(b) the giving of notice of objection under Regulation 58(2)(a) by a creditor of any merging limited liability company.

(10) Paragraphs (11), (12) and (13) apply unless, at the time of the application under this Regulation –

(a) there has been no objection to the merger; and

(b) the time for making any objection has elapsed.

(11) The applicants must –

(a) notify the Commission of any objection of which they become aware after the application;

(b) notify the Commission of the result once any objection, whenever made, has been disposed of; and

(c) provide to the Commission any document or further information reasonably required by the Commission in connection with any objection.

(12) Until the applicants have complied with paragraph (11), the Commission –

(a) must not make any decision on the application other than to refuse consent on grounds unconnected to an objection; and

(b) may, in respect of the application, take any other action short of making a decision, or take no further action.

(13) If a document or information required by the Commission under paragraph (11)(c) is not provided within a reasonable time, the Commission may give the applicants a warning notice stating that the application will be refused unless the document or information is provided within a period specified in the notice being not less than 14 days.

(14) Where any document, information or evidence is submitted under this Regulation –

(a) it must be authenticated in the manner, if any, published by the Commission; or

(b) the Commission may require it to be authenticated in any manner appearing reasonable to the Commission, if the Commission has not published any manner of authentication in relation to that document, information or evidence.

(15) If a document, information or evidence submitted under this Regulation is not in English, it must be accompanied by a translation into English, certified, in a manner approved by the Commission, to be a correct translation.

60 Fees, expenses and security

(1) Article 50 of the Law applies to the Commission's function of considering applications for consent under Regulation 59, as if references in Article 48 of the Law to the registrar were references to the Commission.

(2) On receiving an application under Regulation 59, the Commission may estimate the likely amount of its expenses in dealing with the application.

(3) If the estimated amount exceeds any fee charged under Article 50 of the Law, as applied by paragraph (1), for the consideration of the application, the Commission may require the applicants to give it security for that excess, to its satisfaction.

(4) If the Commission, in the course of considering the application, subsequently forms the view that its expenses will be of a higher amount it may require the applicants to give it security for the difference, to its satisfaction.

(5) If the Commission requires security under paragraph (3) or (4), the Commission need take no further action in respect of the application until the security has been given.

(6) The Commission may give the applicants a warning notice stating that the application will be refused unless the fee is paid, or the security given, within a period specified in the notice being not less than 14 days, if –

(a) a fee is charged under Article 50 of the Law, as applied by paragraph (1), or the Commission requires security under paragraph (3) or (4); and

(b) that fee is not paid, or that security is not given, within a reasonable time from the making of the application or the requirement.

(7) If the Commission has required security under paragraph (3) or (4) –

(a) on determining the application the Commission must ascertain the actual amount of its expenses; and

(b) if the actual amount exceeds any fee paid under Article 48 of the Law, as applied by paragraph (1), the Commission may, by notice in writing, require the applicants to pay the excess.

(8) An excess notified under paragraph (7)(b) is a debt due and payable jointly and severally by the applicants to the Commission.

(9) Without prejudice to any other mode of recovery, the Commission may recover that excess by realising any security given if the excess is not paid by the applicants on demand.

61 Commission may require further information

(1) Following receipt of an application under Regulation 59, the Commission may by notice require the applicants to supply to the Commission any other document or information that the Commission may reasonably require to determine whether to accept the application.

(2) The documents and information may in particular include any that are reasonably required to assess the solvency, and interests of any creditors, of any merging body that is not a limited liability company.

(3) Any such document or information must be authenticated in any manner reasonably required by the Commission.

(4) If the Commission gives a notice under paragraph (1) –

(a) it need take no further action in respect of the application until the document or information has been supplied; and

(b) if the document or information is not supplied within a reasonable time after the notice, it may give the applicants a warning notice stating that the application will be refused unless the document or information is supplied within a period specified in the notice being not less than 14 days.

62 Decisions and appeals

(1) After considering an application under Regulation 59 the Commission may –

(a) give its consent without conditions;

(b) give its consent subject to conditions; or

(c) refuse its consent.

(2) In deciding an application the Commission must –

(a) consider all the relevant circumstances; and

(b) have particular regard to the interests of creditors of the merging bodies, in addition to the matters to which it must have particular regard under Article 7 of the Financial Services Commission (Jersey) Law 1998.

(3) The Commission may refuse its consent, or impose conditions on its consent, on any grounds, including any one or more of the following grounds –

(a) that the merger would unfairly prejudice the interests of a creditor of a merging body;

(b) that the merger would be undesirable with regard to any other matter mentioned in paragraph (2);

(c) that the applicants have not complied with a warning notice under Regulation 59(13), 60(6) or 61(4)(b) within the period specified in that notice;

(d) that any other requirement of or under this Part has not been met in respect of the merger.

(4) Where the merged body is to be an overseas body, the Commission must, unless it is satisfied that it would be preferable in the circumstances not to do so, impose on any consent a condition that the consent is subject to the merging bodies complying with Regulation 64(2) and the merged body complying with Regulation 64(3).

(5) Where the merged body is to be a new limited liability company, the Commission may, without prejudice to the generality of paragraph (3), refuse its consent, as if the application was for registration under Part 2 of the Law, on any ground on which the incorporation or registration of that limited liability company could be prevented under that Law (whether by the registrar, the Commission or the Court).

(6) On determining an application, the Commission must inform the applicants in writing of –

(a) its decision;

(b) if consent is given subject to any condition, the terms of that condition; and

(c) if consent is refused or is given subject to any condition –

(i) the reasons for that refusal or condition, and

(ii) the right to appeal under paragraph (7).

(7) If the Commission refuses consent, or gives consent subject to any condition, an applicant may, within one month after being informed of the decision, appeal to the Court on the ground that the decision was unreasonable having regard to all the circumstances of the case.

(8) On hearing an appeal under paragraph (7) the Court –

(a) may confirm, reverse or vary the decision of the Commission; and

(b) may make an order as to the costs of the appeal.

63 Pre-registration steps: where all merging bodies are limited liability companies

(1) This Regulation applies if all the merging bodies in a merger are limited liability companies.

(2) The merging limited liability companies must apply jointly, in the published form and manner (if any), to the registrar to complete the merger.

(3) Except where all the members of the limited liability companies and all the known creditors of the limited liability companies otherwise agree in writing, the application must not be made until after whichever is the last of the following dates –

(a) if any application was made to the Court under Regulation 55, the last date on which such an application is disposed of otherwise than by an order restraining the merger;

(b) if Regulation 57 applies to the merger, the date of the act of court permitting the merger;

(c) if Regulation 57 does not apply to the merger –

(i) 21 days after the last date on which a notice was published under Regulation 56(6), if by then no creditor has given notice of objection under Regulation 58(2)(a),

(ii) 21 days after the last date on which the last notice of objection by a creditor was given under Regulation 58(2)(a), if by then no creditor has applied to the Court under Regulation 58(2)(b), or

(iii) if any application was made to the Court under Regulation 58(2)(b), the last date on which such an application is disposed of otherwise than by an order restraining the merger.

(4) The application must be accompanied by –

(a) a copy of the merger agreement, unless the merger was approved under Regulation 54;

(b) a copy of –

(i) if the merged limited liability company is to be a new limited liability company, its LLC agreement, or

(ii) if the merged limited liability company is to be a survivor limited liability company, any amendment to its LLC agreement provided for under Regulation 51(5)(a) or 54(3)(b)(iii);

(c) a copy, in respect of each merging limited liability company, of –

(i) the LLC consent under Regulation 52(1), together with, if that information is not contained in the LLC consent, a list identifying the members who voted in favour of that LLC consent, and

(ii) the certificates signed under Regulation 52(5) and (6);

(d) a further certificate, signed by each manager who signed a certificate under Regulation 52(5), stating –

(i) that the manager, and the merging limited liability company of which the manager is a manager, have complied with the requirements of this Part in respect of the merger, and

(ii) if Regulation 57 does not apply to the merger, that in the manager's opinion the merger will not unfairly prejudice any interests of any creditor of that merging limited liability company;

(e) a copy of any act of court under –

(i) Regulation 117 on an application under Regulation 55,

(ii) Regulation 57, or

(iii) Regulation 58; and

(f) any other document or information required by the registrar to establish that the requirements of paragraph (3) have been met.

(5) The registrar must register notices as to the merger in accordance with Regulation 66 if the registrar is satisfied –

(a) that the application complies with paragraphs (2) and (3), and that the documents provided under paragraph (4) comply with that paragraph; and

(b) if the merger agreement provides for the merged limited liability company to be a new limited liability company, that the registrar would have registered the declaration of the limited liability company under Article 4 of the Law if it had been formed otherwise than by merger.

64 Pre-registration steps: where merged body is not a limited liability company

(1) This Regulation applies if –

(a) the merged body provided for in the merger agreement is not to be a limited liability company;

(b) the Commission has given its consent to the merger under Regulation 59; and

(c) if any conditions were attached to that consent (other than a condition under Regulation 62(4)), those conditions have been met to the satisfaction of the Commission.

(2) if this Regulation applies, the merging bodies must take whatever steps are necessary to complete the merger in accordance with the merger agreement under the laws governing the merged body and those merging bodies that are not limited liability companies.

(3) As soon as is reasonably practical after the merging bodies have completed the merger the merged body must –

(a) inform the Commission that it has been completed, including the date of completion;

(b) provide any document or information that the Commission may reasonably require to establish the fact and date of the completion; and

(c) authenticate any such document or information in any manner that the Commission may reasonably require.

(4) If satisfied that the merger has been completed, the Commission must –

(a) provide the registrar with copies of –

(i) the merger agreement,

(ii) the certificates signed under Regulation 52(5) and (6),

(iii) any act of court provided to the Commission under Regulation 59 or 61, and

(iv) the documents provided to the Commission to prove completion; and

(b) instruct the registrar to register the merger.

(5) As soon as is practical after receipt of the documents and instruction under paragraph (4), the registrar must register notices as to the merger in accordance with Regulation 66.

65 Pre-registration steps: other cases

(1) This Regulation applies if –

(a) one or more of the merging bodies in a merger is not a limited liability company;

(b) the merged body provided for in the merger agreement is to be a limited liability company;

(c) the Commission has given its consent to the merger under Regulation 62; and

(d) if any conditions were attached to that consent, those conditions have been met to the satisfaction of the Commission.

(2) The Commission must –

(a) provide the registrar with copies of –

(i) the merger agreement,

(ii) the certificates signed under Regulation 52(5) and (6),

(iii) the LLC agreement of the merged limited liability company, if it was provided to the Commission under Regulation 59(6)(a)(ii), and

(iv) any act of court provided to the Commission under Regulation 59 or 61; and

(b) instruct the registrar to register the merger.

(3) As soon as is practical after receipt of the documents and instruction under paragraph (2), the registrar must register notices as to the merger in accordance with Regulation 66.

66 Registration of notices as to merger

(1) This Regulation applies where the registrar is to register notices as to a merger under Regulations 63, 64 or 65.

(2) The completion date of a merger is –

(a) if the merged body is not a limited liability company, the date notified under Regulation 64(3); or

(b) if the merged body is a limited liability company, the date the last entry on the register is made under this Regulation in relation to the merger.

(3) The registrar must, in respect of each merging limited liability company that is not a survivor body, enter in the register a notice that –

(a) states that the limited liability company has ceased to be registered as a limited liability company because it has merged with a body or bodies specified in the notice, so that they have together continued as a merged body; and

(b) specifies the name of the merged body and –

(i) the enactment under which it is registered in Jersey, or

(ii) the jurisdiction outside Jersey in which it is registered.

(4) If the merged body is a survivor limited liability company, the registrar must, in respect of that limited liability company, enter in the register a notice that –

(a) states that the limited liability company has merged with a body or bodies specified in the notice, so that they have together continued as the merged survivor limited liability company; and

(b) refers to any change in the limited liability company's declaration that takes effect on the merger.

(5) If the merged body is a new limited liability company, the registrar must, if the registrar would have registered the limited liability company under the Law if it had been formed otherwise than as the result of a merger –

(a) register the declaration of and issue a certificate of the formation of the new limited liability company under Article 4 of the Law, as if the registrar had received an application for the creation of the limited liability company under Part 2 of the Law with the declaration provided for in the merger agreement; and

(b) enter in the register, in respect of that new limited liability company, a notice that states that the limited liability company is the result of a completed merger between the former bodies specified in the notice, which have together continued as the new limited liability company.

(6) Each entry under this Regulation –

(a) must in addition include a note specifying the completion date of the merger to which it relates; and

(b) may in addition include a note of any further information that the registrar considers useful in relation to the merger.

(7) When the registrar enters a notice on the register referring to an overseas body, the registrar must also immediately send a copy of the notice to the appropriate official or public body in the jurisdiction in which that body is or was formed.

(8) The registrar must send the copy referred to in paragraph (7) –

(a) electronically;

(b) by some other means of instantaneous transmission; or

(c) if no instantaneous transmission to the official or public body is practicable, by such other means as the registrar believes likely to be acceptable to that official or public body.

67 Effect of completion of merger

(1) On the completion date of a merger –

(a) the merging bodies are merged and continue as one merged body as provided in the merger agreement or in the LLC consents given under Regulation 54;

(b) any merging limited liability company that is not a survivor limited liability company ceases to exist as a separate limited liability company; and

(c) any merging body falling within Regulation 49 that is not a survivor body ceases to be incorporated or registered as a separate body.

(2) When a merger is completed in which the merged body is a limited liability company or a body falling within Regulation 49 –

(a) all property and rights to which each merging body was entitled immediately before the merger was completed become the property and rights of the merged body;

(b) the merged body becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which each of the merging bodies was subject immediately before the merger was completed; and

(c) all actions and other legal proceedings which, immediately before the merger was completed, were pending by or against any of the merging bodies may be continued by or against the merged body.

(3) Entries made on the register under Regulation 66 are conclusive evidence of the following matters to which they refer –

(a) that on the completion date specified in the entry the merging bodies merged and continued as the merged body; and

(b) that the requirements of these Regulations have been complied with in respect of –

(i) the merger of the merging bodies, and

(ii) all matters precedent to and incidental to the merger.

(4) The operation of this Regulation is not regarded –

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

(c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

68 Offences relating to merger

(1) A person commits an offence and is liable to a fine and 2 years imprisonment if, on or in connection with an application under this Part, the person knowingly or recklessly provides to the Commission or to the registrar –

(a) any information which is false, misleading or deceptive in a material particular; or

(b) any document containing any such information.

(2) A person commits an offence and is liable to a fine and 2 years imprisonment if the person signs a certificate under Regulation 52 or 63(4)(d) without having reasonable grounds for the opinion expressed in the certificate or for the statement made in the certificate.

PART 7

DEMERGER

69 Interpretation of Part 7

(1) In this Part –

"completion date", in relation to a demerger, is construed in accordance with Regulation 80(2);

"Comptroller" has the meaning given by Article 1(1) of the Revenue Administration (Jersey) Law 2019;

"demerged limited liability company" means a limited liability company resulting from a demerger under this Part;

"demerger instrument" is construed in accordance with Regulation 71;

"demerging limited liability company" means a limited liability company that demerges into 2 or more limited liability companies under this Part;

"employee" has the meaning given by Article 1A(1) of the Employment (Jersey) Law 2003;

"employer" has the meaning given by Article 1A(1) of the Employment (Jersey) Law 2003;

"Income Tax Law" means the Income Tax (Jersey) Law 1961;

"new limited liability company" means a limited liability company formed as a result of a demerger;

"solvency statement" is construed in accordance with Regulation 72(2);

"survivor limited liability company" means a demerging limited liability company which, on completion of a demerger, continues as a demerged limited liability company.

(2) Nothing in this Part is to be read as preventing –

(a) more than one person from signing the same certificate under this Part; or

(b) more than one certificate signed under this Part from being included in the same document.

(3) References to a certificate are to be construed in accordance with paragraph (2).

70 Limited liability companies eligible and not eligible to demerge and be demerged

(1) Subject to paragraph (2) and to the requirements of this Part, a limited liability company may demerge into 2 or more limited liability companies –

(a) one of which is a survivor limited liability company; or

(b) all of which are new limited liability companies.

(2) The following limited liability companies are not eligible to demerge or become a demerged limited liability company –

(a) a financial services company within the meaning given in Article 3(1) of the Income Tax Law that is subject to tax under Article 123D of that Law;

(b) a utility company within the meaning given in Article 123C(3) of the Income Tax Law;

(c) a limited liability company with profits or gains chargeable to tax from the importation or supply of hydrocarbon oil under Article 123CAA of the Income Tax Law;

(d) a limited liability company with profits or gains chargeable to tax under Schedule A under Article 51(1)(a), (b) or (c) of the Income Tax Law;

(e) a limited liability company required to deduct tax from the earnings payable by the employer to an employee under Article 41B(1) of the Income Tax Law;

(f) a limited liability company required to deduct tax from a payment made to a sub-contractor or to a person nominated by the sub-contractor for the purpose under Article 41E(1) of the Income Tax Law; or

(g) a limited liability company registered under Part 3 of the Goods and Services Tax (Jersey) Law 2007.

(3) Subject to an order of the Court, a limited liability company is not eligible to demerge or to become a demerged limited liability company until the conclusion of the investigation without a criminal prosecution, or the criminal prosecution, as the case may be, if that limited liability company –

(a) is under investigation in relation to an offence; or

(b) has been charged with an offence and against which there is a criminal prosecution pending.

71 Demerger instrument

(1) A limited liability company proposing to demerge must execute a demerger instrument in accordance with this Regulation.

(2) A demerger instrument must state the terms and means of effecting the demerger and, in particular, the following information –

(a) details of the proposed demerging limited liability company, including –

(i) whether or not it is to be a survivor limited liability company, and

(ii) the names and addresses of the persons who are the members or managers of the demerging limited liability company;

(b) details of any arrangements necessary to complete the demerger;

(c) details of any payment, other than of a kind described in paragraph (3)(b), proposed to be made to a member or manager of the demerging limited liability company; and

(d) in relation to the LLC interests in a demerging limited liability company, the information specified in paragraph (3).

(3) The information referred to in paragraph (2)(d) is –

(a) if the LLC interests are to be converted into LLC interests in a demerged limited liability company, the manner in which that conversion is to be done; or

(b) otherwise, the kind of payment that the holders of any LLC interests in the demerging limited liability company are to receive instead of the securities of a demerged limited liability company and the manner in which and the time at which they are to receive it.

(4) If a demerged limited liability company is to be a new limited liability company, the demerger instrument must, in addition to the information required under paragraph (2) –

(a) set out –

(i) the proposed declaration of the demerged limited liability company, and

(ii) the name and address of any person who will become a member or a manager of the demerged limited liability company; and

(b) have attached to it a draft of any other document or information that would be required by the Law to be delivered to the registrar if the demerged limited liability company was being formed under the Law otherwise than by demerger.

(5) If a demerging limited liability company is to be a survivor limited liability company, the demerger instrument must, in addition to the information required under paragraph (2) state –

(a) whether any amendments to the declaration of the demerging limited liability company are proposed to take effect on the demerger and, if so, details of those amendments; and

(b) whether it is proposed that, on the demerger, any person will become, or cease to be, a member or a manager of the survivor limited liability company and, if so, the name and address of each such person.

(6) A demerger instrument may provide that, at any time before the completion date of the demerger, the demerger instrument may be revoked by the demerging limited liability company.

(7) If a demerger instrument is revoked under a provision included in it under paragraph (6), nothing in these Regulations requires or authorises any further steps to be taken to complete the demerger.

(8) A demerger instrument must identify the undertaking, property, rights and liabilities of the demerging limited liability company and must state, in respect of each demerged limited liability company, which part of the undertaking, property, rights and liabilities of the demerging limited liability company is to become the undertaking, property, rights and liabilities of each demerged limited liability company, except that a liability attached to any property of a demerging limited liability company must not be separated from that property.

72 LLC consents and certificates

(1) Before notice is given of a meeting of a demerging limited liability company to approve a demerger instrument under Regulation 71, the managers of the demerging limited liability company must give an LLC consent stating that, in the opinion of the managers voting for the LLC consent, the demerger is in the best interests of the demerging limited liability company.

(2) For the purposes of this Regulation, a solvency statement is a statement that, having made full inquiry into the affairs of the demerging limited liability company, the person making the statement reasonably believes that the demerging limited liability company is, and will remain until the demerger is completed, able to discharge its liabilities as they fall due.

(3) If the managers voting to give the LLC consent are satisfied on reasonable grounds that they can properly make a solvency statement in respect of the demerging limited liability company, the LLC consent must in addition state that they are so satisfied.

(4) If paragraph (3) does not apply, the LLC consent must instead state that the managers voting for it are satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the Court under Regulation 77 for the demerger.

(5) After an LLC consent is given under paragraph (1), but before notice is given as mentioned in that paragraph, each manager who voted in favour of it must sign a certificate –

(a) containing –

(i) if paragraph (3) applies, a solvency statement, or

(ii) if paragraph (3) does not apply, a statement that the manager is satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the Court under Regulation 77; and

(b) setting out the grounds for making the solvency statement under sub-paragraph (a)(i) or statement under sub-paragraph (a)(ii).

(6) If paragraph (3) applies, before notice is given as mentioned in paragraph (1), each person who will become a manager of a demerged limited liability company as set out in the demerger instrument under Regulation 71(4)(a)(ii) must sign a certificate stating –

(a) that, in that person's opinion, the demerged limited liability company of which the person will be a manager is in a position to carry on business and discharge its liabilities as they fall due for the 12 months immediately following the demerger; and

(b) the grounds for that opinion, having particular regard to –

(i) the prospects of the demerged limited liability company,

(ii) the proposals in the demerger instrument with respect to the management of the businesses of the demerged limited liability company, and

(iii) the amount and character of the financial resources that will, in the view of the person signing, be available to the demerged limited liability company.

(7) If none of the persons referred to in paragraph (6) are managers of the demerging limited liability company, the certificate under paragraph (6) must also be signed by a manager referred to in paragraph (5).

73 LLC consent to demerger instrument

(1) The managers of a demerging limited liability company must submit the demerger agreement for approval by LLC consent of the members of that limited liability company, and, where there is more than one class or series of members, for approval by LLC consent of each class or series.

(2) Prior to giving LLC consent the members must be given –

(a) a copy or summary of the demerger instrument;

(b) a copy of the proposed LLC agreement for each demerged limited liability company, or a summary of the principal provisions of the declaration;

(c) if a summary is supplied under sub-paragraph (a) or (b), information as to how a copy of the document summarised may, from the date that the notice is given, be inspected free of charge by members in accordance with paragraph (3);

(d) a copy of the certificates signed under Regulation 72(5) and (6) in respect of that demerging limited liability company;

(e) a statement of the material interests in the demerger of the managers of the demerging limited liability company and of the persons who will become managers of the demerged limited liability companies;

(f) any further information that a member would reasonably require to reach an informed decision on the demerger; and

(g) sufficient information to alert members to their right to apply to the Court under Regulation 74.

(3) A demerging limited liability company must, from the date that notice of a meeting is given under paragraph (1), make the demerger instrument and copies of the proposed LLC agreement of each demerged limited liability company available for inspection free of charge by its members either electronically at any time or at its registered office during normal office hours.

(4) A demerger is approved under this Regulation when all of the LLC consents required under paragraph (1) have been passed in respect of the demerging limited liability company.[7]

(5) A demerger cannot be completed unless it is approved under this Regulation.

74 Objection by member

(1) A member of a demerging limited liability company may –

(a) within 21 days after the date on which the demerger is approved under Regulation 73(4), serve notice on the demerging limited liability company of the member's objection to the demerger; and

(b) within 21 days after the date on which the member of the demerging limited liability company served notice of the member's objection under sub-paragraph (a), apply to the Court for an order on the ground that the demerger would unfairly prejudice the interests of the member.

(2) An objection or application under paragraph (1) may not be made by a member who voted in favour of the demerger under Regulation 73.

(3) If the Court is satisfied that an application under paragraph (1)(b) is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(4) Without prejudice to the generality of paragraph (3), the Court's order may –

(a) regulate the conduct of the demerging limited liability company's affairs in the future;

(b) require the demerging limited liability company to refrain from doing or continuing an act complained of by the member or to do an act which the member has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the demerging limited liability company by such person or persons and on such terms as the Court may direct; and

(d) provide for the purchase of the rights of any members of the demerging limited liability company by other members or by the demerging limited liability company itself and, in the case of a purchase by the demerging limited liability company itself, the reduction of the demerging limited liability company's capital accounts accordingly.

(5) If an order of the Court under this Regulation requires the demerging limited liability company not to make any, or any specified, alterations in its LLC agreement or declaration, the demerging limited liability company must not then without leave of the Court make such alterations in breach of that requirement.

(6) An alteration in the demerging limited liability company's LLC agreement or declaration made by virtue of an order of the Court under this Regulation is of the same effect as if duly consented to by the demerging limited liability company, and

the provisions of the Law apply to the LLC agreement or declaration as so altered accordingly.

(7) The demerging limited liability company must, within 14 days after an order of the Court is made under this Regulation or such longer period as the Court may allow, deliver to the registrar for registration the act of court recording the making of the order under this Regulation –

(a) if the order is altering, or giving leave to alter, a demerging limited liability company's LLC agreement or declaration; or

(b) if the Court otherwise sees fit.

(8) If the demerging limited liability company fails to comply with paragraph (7), the demerging limited liability company commits an offence and –

(a) in the case of a first offence, is liable to a fine of level 3 on the standard scale;

(b) in the case of a subsequent offence, is liable to a fine of level 3 on the standard scale and an additional fine of level 2 on the standard scale for each day (other than the first day) on which the subsequent offence is proved to have continued.

75 Notice to creditors

(1) During the period beginning with the date on which the first notice is given under Regulation 72(1) in relation to a demerger and ending 21 days after the demerger is approved under Regulation 73(4), the demerging limited liability company must send written notice to each of its creditors who, after its managers have made reasonable enquiries, are known to the managers to have a claim against the demerging limited liability company exceeding £5,000.

(2) The notice sent under paragraph (1) must state –

(a) that the demerging limited liability company intends to demerge, in accordance with these Regulations, into 2 or more limited liability companies specified in the notice; and

(b) that the demerger instrument is available to creditors from the demerging limited liability company, on request, free of charge.

(3) If Regulation 77 applies to the demerger, the notice sent under paragraph (1) must (in addition to the matters in paragraph (2)) –

(a) state that a demerging limited liability company has applied or will apply for the permission of the Court under that Regulation;

(b) state that any creditor of the demerging limited liability company may require the demerging limited liability company making the application to send a copy of the application to the creditor; and

(c) set out information as to –

(i) the means by which a creditor may contact the demerging limited liability company making the application, or a person representing the demerging limited liability company in that application, and

(ii) the effect of Regulation 77(4), including the date of the hearing of the application if known at the time of the notice.

(4) If Regulation 77 does not apply to the demerger, the notice sent under paragraph (1) must state (in addition to the matters in paragraph (2)) that any creditor of the demerging limited liability company may –

(a) object to the demerger under Regulation 78(2)(a) and apply to the Court for an order restraining the demerger or modifying the demerger instrument under Regulation 78(2)(b); or

(b) require the demerging limited liability company to notify the creditor if any other creditor of the demerging limited liability company applies to the Court under Regulation 78(2)(b).

(5) The demerging limited liability company must, within the time limit set out in paragraph (6), publish the contents of the notice sent under paragraph (1) –

(a) once in a newspaper circulating in Jersey; or

(b) in any other manner –

(i) approved by the registrar, and

(ii) published by the Commission.

(6) The time limit referred to in paragraph (6) is whichever is the earlier of –

(a) 21 days after the demerger is approved under Regulation 73(4); or

(b) as soon as practicable after the demerging limited liability company sends the last of any notices under paragraph (1).

(7) Subject to paragraph (8), a demerging limited liability company must, from the date that notice of a meeting is given under Regulation 72(1), make the demerger instrument and a copy of the proposed LLC agreement and declaration of each demerged limited liability company available for inspection free of charge by its creditors either electronically at any time or at its registered office during normal office hours.

(8) A demerging limited liability company may redact commercially sensitive information from the demerger instrument or copy of the proposed declaration of each demerged limited liability company prior to making it available for inspection under paragraph (7).

76 Declaration to Comptroller

(1) During the period beginning with the date on which the first notice is given under Regulation 73(2) in relation to a demerger and ending 21 days after the demerger is approved under Regulation 73(4), the demerging limited liability company must, subject to paragraph (2), make a declaration to the Comptroller.

(2) The declaration made under paragraph (1) must state that the demerging limited liability company is eligible to demerge in accordance with Regulation 70(1) as none of the conditions under Regulation 70(2) apply to the demerging limited liability company.

(3) If a demerging limited liability company makes a declaration under paragraph (1), the Comptroller must issue a tax certificate (showing a lodgement number) to the demerging limited liability company.

(4) If the Comptroller discovers that the demerging limited liability company is not eligible to demerge, the Comptroller must advise the registrar of that discovery.

77 Limited liability company to apply to court if solvency statement not made

(1) This Regulation applies to a demerger if any certificate signed by a manager of the demerging limited liability company under Regulation 72(5) does not contain a solvency statement.

(2) A demerger to which this Regulation applies must not be completed unless an order of the Court has been obtained permitting the demerger on the ground that the demerger would not be unfairly prejudicial to the interests of any creditor or member of the demerging limited liability company.

(3) A demerging limited liability company in respect of which a certificate referred to in paragraph (1) has been signed must, as soon as is practicable after the demerger is approved under Regulation 73(4) –

(a) apply to the Court for an order permitting the demerger under paragraph (2); and

(b) send a copy of the application referred to in sub-paragraph (a) –

(i) to any creditor who, after the members have made reasonable enquiries, is known to the members to have a claim against the demerging limited liability company exceeding £5,000,

(ii) to any other creditor of the demerging limited liability company who requests a copy from the demerging limited liability company,

(iii) to any member of the demerging limited liability company who requests a copy of the application, and

(iv) to the registrar.

(4) The Court must not hear an application made under paragraph (3) until at least 28 days after it is made to the court unless the creditors and members mentioned in paragraph (3)(b) consent to a shorter period.

(5) On the hearing by the Court of an application under this Regulation, a person mentioned in paragraph (3)(b) has a right to be heard.

78 Objection by creditor if solvency statement made

(1) This Regulation applies to a demerger to which Regulation 77 does not apply.

(2) A creditor of a demerging limited liability company who has a claim against the demerging limited liability company exceeding £5,000 and who objects to the demerger may –

(a) within 21 days after the date of the publication of the contents of the notice under Regulation 75(5), serve notice of the creditor's objection to the demerging limited liability company; and

(b) within 21 days after the date on which the notice of the creditor's objection was given under sub-paragraph (a), if the creditor's claim against the demerging limited liability company has not been discharged, apply to the Court for an order restraining the demerger or modifying the demerger instrument and serve a copy of the application on the demerging limited liability company.

(3) If a creditor makes an application under paragraph (2)(b), the demerging limited liability company must, as soon as is practicable after being served with a copy of the application under paragraph (2)(b), give a copy of it to each other creditor –

(a) to whom a notice was given under Regulation 75(1);

(b) who has required notification under Regulation 75(4)(b);

(c) who has given notice of objection under paragraph (2)(a); and

(d) to whom the Court orders that a copy should be sent.

(4) If on an application under paragraph (2)(b) the Court is satisfied that the demerger would unfairly prejudice the interests of the applicant, or of any other creditor of the demerging limited liability company, the Court may make an order in relation to the demerger, including –

(a) restraining the demerger; or

(b) modifying the demerger instrument in such manner as may be specified in the order.

(5) The Court must not make an order under paragraph (4)(b) to modify a demerger instrument that does not contain a provision in accordance with Regulation 71(6) allowing the demerging limited liability company to revoke the demerger instrument following the modification unless –

(a) the order also inserts such a provision in the demerger instrument; and

(b) the Court is satisfied that the demerging limited liability company will have an adequate opportunity to reconsider whether to proceed with the demerger following the modification.

79 Pre-registration steps

(1) The demerging limited liability company must apply, in the published form and manner (if any), to the registrar to complete the demerger.

(2) Except where all the members of the demerging limited liability company and all of its creditors, who, after its managers have made reasonable enquiries, are known to the managers to have a claim against the demerging limited liability company exceeding £5,000, otherwise agree in writing, the application under paragraph (1) may not be made until after whichever is the latest of the following dates –

(a) if any application was made to the Court under Regulation 74, the last date on which such an application is disposed of otherwise than by an order restraining the demerger;

(b) if Regulation 77 applies to the demerger, the date of the order permitting the demerger;

(c) if Regulation 77 does not apply to the demerger –

(i) 21 days after the last date on which a notice was published under Regulation 75(5), if by then no creditor has given notice of objection under Regulation 78(2)(a),

(ii) 21 days after the date on which the last notice of objection by a creditor was given under Regulation 78(2)(a), if by then no creditor has applied to the Court under Regulation 78(2)(b), or

(iii) if any application was made to the Court under Regulation 78(2)(b), the last date on which the application is disposed of otherwise than by an order restraining the demerger.

(3) An application under paragraph (1) must be accompanied by –

(a) a copy of the demerger instrument;

(b) a copy of –

(i) if a demerged limited liability company is to be a new limited liability company, its LLC agreement and declaration and any other document required for the formation of a new limited liability company under the Law, or

(ii) if a demerged limited liability company is to be a survivor limited liability company, any amendment to its LLC agreement or declaration provided for under Regulation 71(5)(a);

(c) a copy, in respect of the demerging limited liability company, of –

(i) the LLC consent under Regulation 72(1), together with, if that information is not contained in the LLC consent, a list identifying the managers who voted in favour of that LLC consent, and

(ii) the certificates signed under Regulation 72(5) and (6);

(d) a further certificate, signed by each manager who signed a certificate under Regulation 72(5), stating –

(i) that the manager, and the demerging limited liability company of which the manager is a manager, have complied with the requirements of these Regulations in respect of the demerger, and

(ii) if Regulation 77 does not apply to the demerger, that in the manager's opinion there has been no material change to the position stated in the solvency statement; and

(e) the LLC consent given under Regulation 73;

(f) a copy of any order of the Court under Regulation 74, 77 or 78;

(g) proof that a declaration has been made by the demerging limited liability company under Regulation 76 in the form of a tax certificate (showing a lodgement number) issued by the Comptroller to the demerging limited liability company under Regulation 76(3); and

(h) any other document or information required by the registrar, including documents or information which may be required by the registrar to establish that the requirements of paragraph (2) have been met.

(4) The registrar must register notices as to the demerger in accordance with Regulation 80 if the registrar is satisfied –

(a) that the application complies with paragraphs (1) and (2) and is accompanied by the documents and information required under paragraph (3) and that the documents provided under paragraph (3) comply with that paragraph; and

(b) if the demerger instrument provides for a demerged limited liability company to be a new limited liability company, that the registrar would have registered the declaration of the limited liability company under Article 4 of the Law if it had been formed otherwise than by demerger.

80 Registration of notices as to demerger

(1) This Regulation applies where the registrar is required to register notices as to a demerger under Regulation 79.

(2) The completion date of a demerger is the date the last entry on the register is made under this Regulation in relation to the demerger.

(3) The registrar is to enter in the register, in respect of a demerging limited liability company that is not a survivor limited liability company, a notice that states that the

limited liability company has ceased to be registered as a separate limited liability company because it has demerged into the demerged limited liability companies specified in the notice.

(4) If a demerged limited liability company is a survivor limited liability company, the registrar is to enter in the register, in respect of that limited liability company, a notice that states that the limited liability company has demerged, and has been continued as a survivor limited liability company together with the new limited liability company or limited liability companies specified in the notice.

(5) If a demerged limited liability company is a new limited liability company, the registrar is required to, if the registrar would have registered the new limited liability company under the Law if it had been formed otherwise than as the result of a demerger, register the new limited liability company by –

(a) registering the declaration of the new limited liability company and issuing a certificate of registration under Article 4 of the Law as if the registrar had received an application for the creation of the new limited liability company under Part 2 of the Law with the declaration provided for in the demerger instrument; and

(b) entering in the register, in respect of that new limited liability company, a notice that states that the new limited liability company is the result of a completed demerger of the demerging limited liability company specified in the notice.[8]

(6) The fee payable under Article 50 of the Law in respect of the registration of a limited liability company is payable in respect of the registration of a new limited liability company under paragraph (5).

(7) Each entry on the register under this Regulation –

(a) must in addition include a note specifying the completion date of the demerger to which it relates; and

(b) may in addition include a note of any further information that the registrar considers useful in relation to the demerger.

81 Effect of completion of demerger generally

(1) On the completion date of a demerger –

(a) if the demerging limited liability company is a survivor limited liability company it continues as a demerged limited liability company together with one or more demerged limited liability companies that are new limited liability companies; or

(b) if the demerging limited liability company is not a survivor limited liability company it ceases to be in existence as a separate limited liability company and continues as 2 or more demerged limited liability companies that are new limited liability companies.

(2) Subject to paragraph (3), when a demerger is completed –

(a) all property and rights to which the demerging limited liability company was entitled immediately before the demerger was completed become the property and rights of the demerged limited liability companies in the parts stated in the demerger instrument under Regulation 71(8) or jointly in common in equal parts if not stated in the demerger instrument;

(b) subject to an order of the Court, the demerged limited liability companies become jointly and severally subject to all financial penalties which the demerging limited liability company was subject to immediately before the demerger was completed;

(c) the demerged limited liability companies become subject to all civil liabilities and all contracts, debts and other obligations which the demerging limited liability company was subject to immediately before the demerger was completed in the parts stated in the demerger instrument under Regulation 71(8) or jointly and severally if not stated in the demerger instrument; and

(d) subject to an order of the Court, all actions and other legal proceedings which, immediately before the demerger was completed, were pending by or against the demerging limited liability company may be continued by or against all or any of the demerged limited liability companies.

(3) A licence held by a demerging limited liability company may not be transferred to a demerged limited liability company on completion of the demerger except with the permission of the authority that granted the licence.

(4) Entries made on the register under Regulation 80 are conclusive evidence of the following matters to which they refer –

(a) that on the completion date of the demerger specified in the entry, the demerging limited liability company demerged and was continued as the demerged limited liability companies; and

(b) that the requirements of these Regulations and the Law have been complied with in respect of –

(i) the demerger of the demerging limited liability company under these Regulations, and

(ii) all matters precedent to and incidental to the demerger.

(5) The operation of this Regulation is not to be regarded –

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

(c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument, or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

(6) In this Regulation "licence" includes an authorisation, a certificate, a consent, a permit, a registration or any other permission.

82 Effect of demerger on employment

(1) During the period beginning with the date on which the first notice is given under Regulation 72(1) in relation to a demerger and ending 21 days after the demerger is approved under Regulation 73(4), the demerging limited liability company must send written notice to each of its employees.

(2) The notice sent under paragraph (1) must state –

(a) that the demerging limited liability company intends to demerge, in accordance with these Regulations, into 2 or more limited liability companies specified in the notice; and

(b) that the demerger instrument is available to employees from the demerging limited liability company, on request, free of charge.

(3) A demerging limited liability company must make the demerger instrument available to employees free of charge and may redact commercially sensitive information from the demerger instrument prior to making it available to employees.

(4) Where any duty, right or liability transferred from a demerging limited liability company to a demerged limited liability company under a demerger is a duty, right or liability under a contract of employment –

(a) the contract –

(i) is not terminated by the demerger, unless express provision is made to that effect, or unless paragraph (5) applies, and

(ii) has effect from the completion date of the demerger as if between the employee and the demerged limited liability company;

(b) any act done or omitted to be done before the completion date of the demerger by or in relation to the demerging limited liability company in respect of the contract of employment or employee is to be treated from that date as having been done or omitted to be done, as the case may be, by or in relation to the demerged limited liability company; and

(c) a period of employment with the demerging limited liability company is to be treated as a period of employment with the demerged limited liability company, and the demerger is not to be treated as interrupting the continuity of that period.

(5) Where an employee objects to a transfer of the employee's rights and liabilities under a contract of employment, the employee must give notice of the employee's objection to the demerging limited liability company in writing prior to the completion date of the demerger and where such notice is given and has not been withdrawn prior to that date –

(a) subject to sub-paragraph (d), the rights and liabilities of the employee under the contract of employment are not transferred by the demerger;

(b) subject to sub-paragraph (d), the employee is not to be treated, for any purpose, as having been either employed by the demerged limited liability company or dismissed by the demerging limited liability company;

(c) the employee's contract of employment terminates on the completion date of the demerger and the demerging limited liability company may make a payment to the employee in lieu of notice in respect of all or part of the relevant unexpired notice period; and

(d) any liability of the demerging limited liability company to pay the employee upon termination of the employee's contract of employment under sub-paragraph (c) is a liability of the demerged limited liability companies in the parts stated in the demerger instrument under Regulation 71(8) or jointly and severally if not stated in the demerger instrument.

(6) Any collective agreement continues to have effect in respect of an employee as if made by or on behalf of the demerged limited liability company to which the rights and liabilities under the collective agreement are transferred if it is –

(a) made by the demerging limited liability company with a representative body recognised by the demerging limited liability company; and

(b) in force in relation to an employee immediately before the completion date of the demerger.

(7) Changes to an employee's terms and conditions of employment may, after the expiry of one year after the completion date of the demerger, be negotiated between a demerged limited liability company and an employee of that demerged limited liability company (whose contract of employment was transferred from the demerging limited liability company to the demerged limited liability company) without the risk of the changes being declared void on the basis of terms and conditions that were in effect between the demerging limited liability company and the employee before the demerger.

(8) A demerged limited liability company must not within one year after a demerger terminate the recognition of a representative body whose recognition by the demerging limited liability company was effective immediately prior to the completion date of the demerger.

(9) A demerging limited liability company may transfer to a demerged limited liability company the following information regarding an employee of the demerging limited liability company for the purpose of employment of the employee by the demerged limited liability company –

(a) the name and address of the employee;

(b) the age of the employee;

(c) educational or vocational qualifications of the employee;

(d) information regarding a collective agreement which applies to the employee;

(e) information regarding any current disciplinary proceedings or grievances in respect of the employee;

(f) information regarding any legal action taken by the employee against the employer in the previous 2 years;

(g) information regarding any annual, special, maternity, paternity or other leave due to be taken or owed to the employee; and

(h) any other information which may reasonably be necessary.

83 Effect of a demerger on retirement schemes

If, immediately before the completion date of a demerger, the demerging limited liability company had a contractual obligation to pay a contribution to a retirement scheme on behalf of an employee, that contractual obligation is, on the completion date of the demerger, transferred to the demerged limited liability company, if any, which is the employee's employer on the completion date of the demerger.

84 Offences relating to demerger

(1) A person commits an offence if the person, on or in connection with an application under this Part, knowingly or recklessly provide to the registrar or the Comptroller –

(a) any information which is false, misleading or deceptive in a material particular; or

(b) any document containing any information which is false, misleading or deceptive in a material particular.

(2) A person commits an offence if, the person signs a certificate under Regulation 72 or 79(3)(d) without having reasonable grounds for the opinion expressed in the certificate or for the statement made in the certificate.

(3) A person who contravenes paragraph (1) or (2) commits an offence and is liable to imprisonment for a term of 2 years and a fine.

PART 8

CONTINUANCE

85 Limited liability companies which are eligible for continuance

(1) Subject to Regulation 86, a body which is registered outside Jersey may apply under Regulation 88 to the Commission for the issue to that body of a certificate that it continues as a limited liability company registered under the Law if it is authorised to make such an application by the laws of the jurisdiction under which it is registered outside Jersey.

(2) Subject to Regulation 86, a limited liability company which is registered in Jersey under the Law may apply under Regulation 97 to the Commission for authorisation to seek continuance as a body registered under the laws of another jurisdiction if Regulation 95 is complied with and the proposal to apply in that other jurisdiction for continuance there is approved by its members in accordance with Regulation 94.

86 Restrictions on continuance

(1) An application may not be made under Regulation 88 by a limited liability company to which paragraph (3) applies for continuance as a limited liability company incorporated or registered under the Law.

(2) An application may not be made under Regulation 97 by a limited liability company to which paragraph (3) applies for authorisation to seek continuance in another jurisdiction.

(3) This paragraph applies to a limited liability company if –

(a) it is being wound up, or is in liquidation or is subject to a declaration under the Bankruptcy (Désastre) (Jersey) Law 1990;

(b) it is insolvent;

(c) a receiver, manager or administrator (by whatever name any such person is called) has been appointed, whether by a court or in some other manner, in respect of any property of that limited liability company;

(d) it has entered into a compromise or arrangement with a creditor (not being a compromise or arrangement approved by the Commission) and that compromise or arrangement is in force; or

(e) an application is pending before a court for the winding up or liquidation of that limited liability company, or to have it declared insolvent, or for a declaration under the Bankruptcy (Désastre) (Jersey) Law 1990, or for the appointment of such a receiver, manager or administrator or for the approval of such a compromise or arrangement.

(4) For the purposes of paragraph (3), it is immaterial in which jurisdiction –

(a) the body is being wound up or is in liquidation;

(b) the receiver, manager or administrator has been appointed or the compromise or arrangement has been entered into; or

(c) the application before a court is pending.

87 Security for Commission's expenses under this Part

(1) The Commission must estimate the likely amount of its expenses in dealing with an application on receiving –

(a) an application under Regulation 88, by a body registered outside Jersey, for continuance as a limited liability company registered under the Law; or

(b) an application under Regulation 97, by a limited liability company registered under the Law, for authorisation to seek continuance in another jurisdiction.[9]

(2) The Commission must then require the applicant to give it security for that amount, to the satisfaction of the Commission, and must not consider the application further until the security has been given.

(3) If the Commission, in the course of considering the application, subsequently forms the view that its expenses will be of a higher amount –

(a) it may require the applicant to give it security for that higher amount, to its satisfaction; and

(b) it may refuse to consider the application further until that security has been given.

(4) On determining the application, the Commission must ascertain the actual amount of its expenses, and inform the applicant.

(5) The expenses are a debt due and payable by the applicant to the Commission.

(6) Without prejudice to any other mode of recovery, the Commission may recover the expenses by realising the security if they are not paid by the applicant on demand.

88 Application to Commission for continuance within Jersey

(1) An application to the Commission by a body registered outside Jersey, for continuance as a limited liability company registered under the Law, must be accompanied by –

(a) a copy (certified, in a manner approved by the Commission, to be a true copy) of the LLC agreement, or of the law or other instrument constituting or defining the constitution of the body;

(b) particulars of continuance which comply with Regulation 89;

(c) a solvency statement which is in accordance with Regulation 100;

(d) the name under which it is proposed to continue the body as a limited liability company registered under the Law;

(e) the name and address of every person who is a member or a manager of the body at the date of the application or is to be a member of it upon its continuance as a limited liability company registered under the Law;

(f) the name and address of each person who is a secretary of the body at the date of the application or is to be its secretary upon its continuance as a limited liability company registered under the Law;

(g) any other information that the registrar would require on an application to register the body as a limited liability company under the Law;

(h) any other documents and information that the Commission may require in respect of a particular application; and

(i) any published application fee.

(2) The application must also be accompanied by evidence, satisfactory to the Commission, of the following matters –

(a) that the body is authorised, by the laws of the jurisdiction under which it is registered, to make the application to the Commission;

(b) where the constitution of the body or the law of that jurisdiction requires that any authorisation be given for the application to the Commission, that it has been given;

(c) that if a certificate of continuance is issued under Regulation 92 in connection with the application, the body will at that time cease to be registered under the other jurisdiction;

(d) that if a certificate of continuance is issued, the interests of the members and the creditors of the body will not be unfairly prejudiced; and

(e) that the body is not prevented by Regulation 86 from making the application.

(3) If an instrument which is submitted in accordance with paragraph (1)(a) is not in English, the application must also be accompanied by a translation of the instrument into English that is certified in a manner approved by the Commission to be a correct translation.[10]

89 Particulars of continuance

(1) Particulars of continuance must state those amendments to be made to the instrument constituting or defining the body's constitution which are necessary to conform to the laws of Jersey.

(2) Particulars of continuance must also state any other amendments which are to be made to the instrument –

(a) that have been approved by its members in the manner required by the Law for amendments to an LLC agreement of a limited liability company; and

(b) that would be permitted under the laws of Jersey if the body were a limited liability company.

90 Proposed name

(1) After receiving an application under Regulation 88, the Commission must inform the registrar of the name in which the applicant proposes to continue as a limited liability company registered under the Law.

(2) The registrar must then inform the Commission whether that name is in the registrar's opinion in any way misleading or otherwise undesirable.

(3) If the applicant proposes to continue as a limited liability company, its name must in any event comply with Article 7 of the Law.

91 Determination of application to Commission for continuance within Jersey

(1) The Commission may grant an application under Regulation 88 for continuance as a limited liability company registered under the Law if the Commission –

(a) is satisfied that the application complies with that Regulation and with Regulation 85(1);

(b) is informed by the registrar that the proposed name of the applicant is in the registrar's opinion not in any way misleading or otherwise undesirable, and is also satisfied that the name complies with Article 7 of the Law;

(c) is satisfied that all other approvals and consents required by the law of Jersey for the issue of a certificate of continuance to the applicant have been given; and

(d) is satisfied that the applicant has paid the application fee, if any, and the expenses due to the Commission under Regulation 87.

(2) If the application is granted, the Commission must inform the registrar and deliver to the registrar the documents which accompanied the application.

(3) On determining the application, the Commission must inform the applicant of its decision.

(4) If required by the applicant, the Commission must give the applicant, within 14 days, a statement in writing of its reasons for a decision to refuse the application.

(5) An applicant may, within one month after being informed of a decision by the Commission to refuse the applicant's application, appeal to the Court on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.

(6) On hearing the appeal, the Court –

(a) may confirm or reverse the decision of the Commission; and

(b) may make an order as to the costs of the appeal.

92 Issue of certificate of continuance within Jersey

(1) The registrar must register an application and the accompanying documents when the registrar –

(a) is informed under Regulation 91 by the Commission that it has granted an application for a certificate of continuance as a limited liability company registered under the Law; and

(b) receives from the Commission the documents which accompanied the application.

(2) On registration, the registrar must immediately issue to the applicant a certificate of continuance which is signed by the registrar and sealed with registrar's seal.

(3) When the registrar issues a certificate of continuance, the registrar must also immediately send a copy of the notice to the appropriate official or public body in the jurisdiction to which Regulation 88(2)(a) refers.

(4) The registrar must send the copy referred to in paragraph (3) –

(a) electronically;

(b) by some other means of instantaneous transmission; or

(c) if no instantaneous transmission to the official or public body is practicable, by such other means as the registrar believes likely to be acceptable to that official or public body.

93 Effect of issue of certificate of continuance within Jersey

(1) Upon the issue of the certificate of continuance by the registrar –

(a) the body becomes a limited liability company registered under the Law, to which the Law applies accordingly; and

(b) the LLC agreement or the declaration, or the instrument constituting or defining the constitution of the body, as amended in accordance with its particulars of continuance, becomes the LLC agreement of the continued limited liability company.

(2) When a body is continued as a limited liability company registered under the Law –

(a) all property and rights to which the body was entitled immediately before the certificate of continuance is issued are the property and rights of the limited liability company;

(b) the limited liability company is subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the body was subject immediately before the certificate of continuance is issued; and

(c) all actions and other legal proceedings which, immediately before the issue of the certificate of continuance, were pending by or against the body may be continued by or against the limited liability company.

(3) A certificate of continuance is conclusive evidence of the following matters –

(a) that the limited liability company is registered under the Law; and

(b) that the requirements of the Law have been complied with in respect of –

(i) the continuance of the limited liability company under the Law,

(ii) all matters precedent to its continuance as a limited liability company, and

(iii) all matters incidental to its continuance as a limited liability company.

94 Approval by members of proposal for continuance overseas

(1) A proposal by a limited liability company to apply in another jurisdiction for continuance there must be approved by an LLC consent by the members of the limited liability company.

(2) Before giving the LLC consent, the members must be provided with –

(a) a copy or summary of the proposed application in the other jurisdiction for continuance there; and

(b) a statement that any member of the limited liability company who objects to the application may, within the time limit specified in Regulation 96(2), apply to the Court for an order under Regulation 117 on the ground that the proposed continuance would unfairly prejudice the member's interests.

(3) Subject to any provision to the contrary in the LLC agreement, a decision to approve a proposed application in another jurisdiction for continuance is to be made in accordance with Article 16(2) of the Law.

95 Notice to creditors of application to Commission for authorisation to seek continuance overseas

(1) At least 21 days before a limited liability company makes an application under Regulation 97 to the Commission for authorisation to seek continuance in another jurisdiction, the limited liability company must, unless all its known creditors otherwise agree in writing, give notice to them under this Regulation.[11]

(2) The notice –

(a) must state that the limited liability company intends to make the application to the Commission, and must specify the jurisdiction in which it proposes to seek continuance;

(b) must be sent in writing to each creditor of the limited liability company;

(c) must be published once in a newspaper circulating in Jersey or in another manner as the Court may on application direct; and

(d) must state that any creditor of the limited liability company who objects to the application may within 21 days of the date of the publication under sub-paragraph (c) give notice of the creditor's objection to the limited liability company.

(3) A creditor who gives notice under paragraph (2)(d) and whose claim against the limited liability company has not been discharged may, within 21 days after the date of the notice, apply to the Court for an order restraining the application by the limited liability company to the Commission under Regulation 97.

(4) On the creditor's application the Court, if satisfied that the interests of the creditor would be unfairly prejudiced by the proposed continuance, may make an order (subject to such terms, if any, as it may think fit) restraining the application by the limited liability company to the Commission under Regulation 97.

96 Objections by members to continuance overseas

(1) If the members of a limited liability company give an LLC consent to make an application under Regulation 97 to the Commission for authorisation to seek continuance in another jurisdiction, any member of the limited liability company who objects to the application (other than a member who approved, consented to or voted in favour of it) may apply to the Court for an order under Regulation 117 on the ground that the proposed continuance would unfairly prejudice the member's interests.

(2) No such application may be made by a member after the expiration of the period of 21 days following the last LLC consent of the members of the limited liability company which is required under Regulation 94.

97 Application to Commission for authorisation to seek continuance overseas

(1) An application to the Commission under this Regulation for authorisation to seek continuance in another jurisdiction must be accompanied by –

(a) a copy (certified, in a manner approved by the Commission, to be a true copy) of each LLC consent which is required under Regulation 94;

(b) a solvency statement which is made in accordance with Regulation 100;

(c) any other documents and information that the Commission may require in respect of a particular application for the authorisation; and

(d) any published application fee.

(2) The application under this Regulation must also be accompanied by evidence, satisfactory to the Commission, of the following matters –

(a) that the laws of the jurisdiction in which the limited liability company proposes to continue allow its continuance there as a limited liability body formed under those laws;

(b) that those laws provide that upon the continuance of the limited liability company as a limited liability body in that jurisdiction –

(i) all property and rights of the limited liability company will become the property and rights of the limited liability body,

(ii) the limited liability body will become subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the limited liability company is subject, and

(iii) all actions and other legal proceedings which are pending by or against the limited liability company may be continued by or against the limited liability body;

(c) that notice has been given to the creditors of the limited liability company, in accordance with Regulation 95, of the application to the Commission under this Regulation, and either –

(i) that no creditor has applied to the Court for an order restraining the application made to the Commission under this Regulation, or

(ii) that the application of every creditor who has so applied to the Court has been determined by the Court in a way which does not prevent the Commission from granting the application made to it under this Regulation;

(d) either –

(i) that no member of the limited liability company has applied to the Court for an order under Regulation 117 on the ground specified in Regulation 96(1), or

(ii) that the application of every member who has so applied to the Court has been determined by the Court in a way which does not prevent the Commission from granting the application made to it under this Regulation;

(e) that the limited liability company has complied with any other conditions that may be prescribed; and

(f) that the limited liability company is not prevented by Regulation 86 from making the application.

98 Determination of application to Commission for authorisation to seek continuance overseas

(1) The Commission may grant an application under Regulation 97 on the condition specified in paragraph (2) and on such other conditions (if any) as it may specify in its decision if –

(a) it is satisfied that the application complies with that Regulation and with Regulation 85; and

(b) in addition to having paid the application fee (if any), the applicant has paid the expenses due to the Commission under Regulation 87.

(2) It is a condition of the grant of any application made under Regulation 97 that, within a time sufficient to enable the registrar to comply with Regulation 99, the applicant will ensure –

(a) that the registrar is informed of the date on which continuance will be or is granted in the other jurisdiction; and

(b) that a copy of the instrument of continuance in the other jurisdiction, certified to be a true copy, is delivered to the registrar.

(3) On determining the application, the Commission must inform the applicant of its decision.

(4) If required by the applicant, the Commission must provide the applicant within 14 days with a statement in writing of its reasons for a decision to refuse the application.

(5) An applicant may, within one month after being informed of a decision by the Commission to refuse its application, or to grant it subject to a condition (not being a condition specified in paragraph (2)), appeal to the Court on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.

(6) On hearing the appeal, the Court –

(a) may confirm, reverse or vary the decision of the Commission; and

(b) may make an order as to the costs of the appeal.

99 Effect of continuance overseas

When a limited liability company is, in accordance with the terms of authorisation of the Commission under Regulation 98, continued as a limited liability body under the laws of the other jurisdiction to which the authorisation relates –

(a) it ceases to be a limited liability company under the Law; and

(b) the registrar must on that date record that under paragraph (a) it has ceased to be registered under the Law.

100 Solvency statements in respect of continuance

(1) A solvency statement for the purposes of an application under Regulation 88 for continuance as a limited liability company formed under the Law must be signed by each person who is a manager of the applicant and must state that, having made full inquiry into the affairs of the applicant, that manager reasonably believes –

(a) that the applicant is and, if the application is granted, will upon the issue to it of a certificate of continuance, be able to discharge its liabilities as they fall due;

(b) that, having regard to the factors in paragraph (2), the limited liability company will be able to –

(i) continue to carry on business, and

(ii) discharge its liabilities as they fall due.

(2) The factors are –

(a) the prospects of the limited liability company;

(b) the intentions of the managers with respect to the management of the limited liability company's business, and

(c) the amount and character of the financial resources that will in the managers' view be available to the limited liability company.

(3) A solvency statement for the purposes of an application under Regulation 97 for authorisation to seek continuance in another jurisdiction must be signed by each person who is a manager of the applicant and must state that, having made full inquiry into the affairs of the applicant, that manager reasonably believes –

(a) that the applicant is and, if the application is granted, will upon its registration under the laws of the other jurisdiction be able to discharge its liabilities as they fall due; and

(b) that the applicant, if registered under the laws of the other jurisdiction, will be able to discharge its liabilities as they fall due, having regard to –

(i) the prospects of the applicant,

(ii) the intentions of the managers with respect to the management of the applicant's business, and

(iii) the amount and character of the financial resources that will in the managers' view be available to the applicant if the application is granted.

(4) A solvency statement for the purposes of Regulation 88 or 97 must also be signed by each person who is to be a manager of the applicant upon its continuance as proposed in the application and must state that the person signing has no reason to believe that anything in the statement is untrue.[12]

(5) A manager, or a person who is to be a manager, who makes a statement under this Regulation without having reasonable grounds for the opinion expressed in the statement commits an offence and is liable to a fine and 2 years imprisonment.

101 Provisions relating to continuance

The Commission may publish for the purposes of this Part details of –

(a) the forms of solvency statements;

(b) any other document or information that is to be provided on applications relating to continuance within or outside Jersey;

(c) how applicants must verify documents or information so provided; and

(d) the application fees that are payable to the Commission.

102 Offences relating to continuance

(1) A person must not, on or in connection with an application under this Part, knowingly or recklessly provides to the Commission –

(a) any information which is false, misleading or deceptive in a material particular; or

(b) any document containing any information which is false, misleading or deceptive in a material particular.

(2) A person who contravenes paragraph (1) commits an offence and is liable to a fine and 2 years imprisonment.

PART 9

ECONOMIC SUBSTANCE TEST

103 Power for Minister for Treasury and Resources to apply to Court

If the Minister for Treasury and Resources receives a report from the Comptroller of Revenue under Article 9(5) of the Taxation (Companies – Economic Substance) (Jersey) Law 2019 that a limited liability company has not met the economic substance test within the meaning of that Law, the Minister for Treasury and Resources may apply to the Court for an order under Regulation 104.[13]

104 Powers of Court[14]

(1) If, on receiving an application under Regulation 103, the Court is satisfied that the limited liability company which is the subject of the report has not met the economic substance test, the Court may make such order as it thinks fit requiring the limited liability company to take any action specified in the order for the purpose of meeting the test, including any action described in Regulation 117(2).[15]

(2) If, under paragraph (1), the Court orders a limited liability company to take any action described in Regulation 117(2), paragraphs (3) to (5) of that Regulation apply, as if an order under paragraph (1) were an order under that Regulation.

PART 10

INVESTIGATIONS

105 Appointment of inspectors

(1) The Minister or the Commission may appoint one or more inspectors to investigate the affairs of a limited liability company and to report on them as the Minister or the Commission may direct.

(2) The appointment may be made on the application of the registrar, the limited liability company or a member, officer or creditor of the limited liability company.

(3) The Minister or the Commission may, before appointing inspectors, require the applicant, other than the registrar, to give security, to an amount not exceeding £10,000 or such other sum as may be prescribed by Order made under Article 61 of the Law for payment of the costs of the investigation.

(4) This Regulation applies whether or not the limited liability company is being wound up.

(5) In any case where the Minister or the Commission may exercise a function under this Regulation, the decision of the Minister takes precedence.

106 Powers of inspectors

(1) If inspectors appointed under Regulation 105 to investigate the affairs of a limited liability company think it necessary for the purposes of their investigation to investigate also the affairs of another limited liability company or body corporate which is or at any relevant time has been the limited liability company's subsidiary or holding entity, or a subsidiary of its holding entity or a holding entity of its subsidiary, they have power to do so, and they must report on the affairs of the other entity so far as they think the results of their investigation of its affairs are relevant to the investigation of the affairs of the first-mentioned limited liability company.

(2) Inspectors appointed under Regulation 105 may at any time in the course of their investigation, without the necessity of making an interim report, inform the Minister or the Commission (as the case may be) and the Attorney General of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.

107 Production of records and evidence to inspectors

(1) If inspectors appointed under Regulation 105 consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation –

(a) the inspectors may require the person –

(i) to produce and make available to them all records in the person's custody or power relating to that matter,

(ii) at reasonable times and on reasonable notice, to attend before them, and

(iii) otherwise to give them all assistance in connection with the investigation which the person is reasonably able to give; and

(b) that person must comply with the requirement.

(2) Inspectors may for the purposes of the investigation examine on oath any person mentioned in paragraph (1), and may administer an oath accordingly.

(3) A person who is required under paragraph (1) to answer any question which is put to the person by an inspector must not –

(a) knowingly or recklessly makes a statement which is false, misleading or deceptive in a material particular; or

(b) knowingly or recklessly withholds any information the omission of which makes the information which is furnished misleading or deceptive in a material particular.

(4) A person who contravenes paragraph (3) commits an offence and is liable to a fine and 2 years imprisonment.

(5) An answer given by a person to a question put to the person in exercise of the powers conferred by this Regulation may not be used in evidence against the person in any criminal proceedings except –

(a) proceedings in which the person is charged with knowingly or recklessly making a false statement in the course of being examined on oath under paragraph (2);

(b) proceedings under paragraph (3); or

(c) proceedings for contempt of court under Regulation 111(2).

108 Power of inspectors to call for managers' bank accounts

If inspectors appointed under Regulation 105 have reasonable grounds for believing that a manager, or past manager, of the limited liability company or other body whose affairs they are investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Jersey or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that manager towards the limited liability company or its members, the inspectors may require the manager to produce and make available to them all records in the manager's possession or under the manager's control relating to that bank account.

109 Authority for search

(1) Inspectors appointed under Regulation 105 may for the purpose of an investigation under that Regulation apply to the Bailiff for a warrant in relation to specified premises.

(2) If the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled the Bailiff may issue a warrant authorising a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions are –

(a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(b) that the investigation for the purpose of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

(4) If a person has entered premises in the execution of a warrant issued under this Regulation, the person may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(5) In this Regulation, "premises" includes any place and, in particular, includes –

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any offshore installation; and

(c) any tent or movable structure.

110 Obstruction

A person who wilfully obstructs a person acting in the execution of a warrant issued under Regulation 109 commits an offence and is liable to a fine and 2 years imprisonment.

111 Failure to co-operate with inspectors

(1) The inspectors may give a certificate in writing to the Court if a person –

(a) fails to comply with a requirement under Regulation 107 or 108; or

(b) refuses to answer any question put to the person by the inspectors for the purpose of the investigation.

(2) On receiving a certificate the Court may inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may punish the offender as if the person had been guilty of contempt of the Court.

112 Inspectors' reports

(1) The inspectors may, and, if directed by the Minister or the Commission, must –

(a) make interim reports; and

(b) on conclusion of their investigation make a final report.

(2) The inspectors must send the reports to the Minister or to the Commission, as the case may be.

(3) The Minister or the Commission may –

(a) forward a copy of any report made by the inspectors to the limited liability company's registered office;

(b) furnish a copy on request and on payment of the prescribed or published fee to –

(i) any member of the limited liability company or other body which is the subject of the report,

(ii) any person whose conduct is referred to in the report,

(iii) the auditors of the limited liability company or that body,

(iv) the applicants for the investigation,

(v) a relevant supervisory authority, or

(vi) any person whose financial interests appear to the Minister or the Commission to be affected by the matters dealt with in the report, whether as a creditor of the limited liability company or as a body, or otherwise; and

(c) cause the report to be printed and published.

(4) In this Regulation, "relevant supervisory authority" means an authority discharging in a country or territory outside Jersey any function that is the same as, or similar to, a function of the Commission.

113 Power to bring civil proceedings on behalf of limited liability company

(1) If, from any report made or information obtained under this Part, it appears to the Minister or the Commission that civil proceedings ought in the public interest to be brought by a limited liability company, the Minister or the Commission may bring those proceedings in the name and on behalf of the limited liability company.

(2) The Minister or the Commission must, at the expense of the States or the Commission as appropriate, indemnify the limited liability company against any costs or expenses incurred by it in or in connection with proceedings brought under this Regulation.

(3) In any case where the Minister or the Commission may exercise a discretion under this Regulation, the decision of the Minister takes precedence.

114 Expenses of investigating a limited liability company's affairs

(1) The expenses of and incidental to an investigation by inspectors are provided in the first instance by the Minister or the Commission, but the following are liable to make repayment to the Minister or the Commission –

(a) to the extent specified in the Court order, a person who –

(i) is convicted in proceedings on a prosecution instituted as a result of the investigation, or

(ii) is ordered to pay the whole or any part of the costs of the proceedings brought under Regulation 113;

(b) a limited liability company in whose name proceedings are brought under Regulation 113, to the amount or value of any sums or property recovered by it as a result of those proceedings;

(c) a limited liability company which has been the subject of the investigation, except so far as the Minister or the Commission otherwise directs; and

(d) the applicant or applicants for the investigation (other than the registrar), to the extent (if any) which the Minister or the Commission may direct.

(2) For the purposes of this Regulation, costs or expenses incurred by the Minister or the Commission in or in connection with proceedings brought under Regulation 113 (including expenses incurred under paragraph (2) of that regulation are to be treated as expenses of the investigation giving rise to the proceedings.

(3) A liability to repay the Minister or the Commission imposed by paragraph (1)(a) or (b) is (subject to satisfaction of the Minister's or Commission's right to repayment) a liability also to indemnify all persons against liability under -paragraph (1)(c) or (d) of that paragraph, and a liability imposed by paragraph (1)(a) is (subject as mentioned above) a liability also to indemnify all persons against liability under paragraph (1)(b).

(4) A person liable under paragraph (1) is entitled to a contribution from any other person liable under that paragraph according to the amount of their respective liabilities under it.

(5) Expenses to be paid by the Minister or the Commission under this Regulation will, so far as not recovered under it, be paid out of money provided by the States or the Commission as appropriate.

(6) In particular, such reasonable sums as the Minister or the Commission may determine in respect of general staff costs and overheads are to be treated as expenses of the investigation.

115 Inspectors' report to be evidence

(1) A copy of a report of inspectors, certified by the Minister or the Commission to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.

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

116 Privileged information

Nothing in this Part requires the disclosure or production, to the Commission or to an inspector appointed by the Minister or the Commission –

(a) by a person, of information or records which the person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if the person is a lawyer, the name and address of the lawyer's client;

(b) by a limited liability company's bankers, of information or records relating to the affairs of any of their customers other than the limited liability company or other body under investigation.

PART 11

MISCELLANEOUS

117 Powers of Court

(1) If the Court is satisfied that an application under Regulation 55, 94, 96 or 103 is well founded, it may make an order giving relief in respect of the matters complained of.

(2) In particular, the Court's order may –

(a) regulate the conduct of the limited liability company's affairs in the future;

(b) require the limited liability company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the limited liability company by a person or persons and on the terms the Court may direct; and

(d) provide for the purchase of the rights of any members of the limited liability company by other members or by the limited liability company itself and, in the case of a purchase by the limited liability company itself, the reduction of the limited liability company's capital accounts accordingly.[16]

(3) If an order under this Regulation requires the limited liability company not to make any, or any specified, alterations in its declaration or LLC agreement, the limited liability company must not without leave of the Court make alterations in breach of that requirement.

(4) An alteration in the limited liability company's LLC agreement or declaration made by virtue of an order of the Court under this Regulation is of the same effect as if duly approved by the limited liability company, and the provisions of these Regulations apply to the declaration or LLC agreement as so altered accordingly.

(5) The act of court recording the making of an order under this Regulation altering, or giving leave to alter, a limited liability company's LLC agreement or declaration must, within 14 days from the making of the order or such longer period as the Court may allow, be delivered by the limited liability company to the registrar for registration.

(6) A limited liability company that fails to comply with paragraph (5) commits an offence and is liable to a fine of level 3 on the standard scale and a fine of level 2 on the standard scale for each day during which the offence continues.

118 Citation and commencement

These Regulations may be cited as the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022 and come into force on the commencement of Article 60 of the Limited Liability Companies (Jersey) Law 2018.

SCHEDULE[17]

(Regulation 30)

PROSPECTUS

PART 1

INFORMATION TO BE SPECIFIED IN PROSPECTUS

1 Details relating to the offer

A prospectus must be state –

(a) the names, occupations and addresses of –

(i) the offerors or vendors of the securities in the limited liability company, and

(ii) any promoter of those securities or membership of the limited liability company;

(b) the terms applicable to the acquiring of the securities or membership in the limited liability company, and (if those terms include a price that is payable) the method, time and place of payment;

(c) the opening and closing dates and times of the offer;

(d) the minimum amount required to be raised by the offer;

(e) when and how money will be returned in the event of the offer not being completed or any securities applied for not being issued;

(f) the anticipated date and forecast amount of the first distribution or interest payment on the securities that are the subject of the offer;

(g) general particulars of any property that is to be acquired with the proceeds of the offer; and

(h) in the case of any business that is to be acquired with the proceeds of the offer, the length of time during which that business has been carried on (if more than 2 years from the date of issue of the prospectus).

2 Capital

A prospectus must state particulars of the securities together with details of any existing securities that are not part of the offer.

3 Goodwill, preliminary expenses and benefits

A prospectus must state particulars of any amounts to be written off or provided for in respect of goodwill or preliminary expenses, or of any benefit given to a promoter.

4 Contracts

A prospectus must state the dates of, parties to and general nature of every material contract, not being –

(a) a contract entered into in the ordinary course of the business carried on or intended to be carried on by the limited liability company; or

(b) a contract entered into more than 2 years before the date of issue of the prospectus.

5 Interests of managers

A prospectus must state –

(a) full particulars of the nature and extent of the direct or indirect interest in the offer (if any) of every manager of the limited liability company, and where the interest of a manager consists of being a partner in a firm, full particulars of the nature and extent of the interest of the firm; and

(b) details of all sums paid or agreed to be paid to any such manager or firm in cash or securities or otherwise by any person to induce that manager to become a manager, or otherwise for services rendered by the manager or by the firm in connection with the promotion or registration of the limited liability company.

6 Debentures and loans

A prospectus must state details of any subscriptions, allotments or options to be given, or already existing, in respect of any other securities, including any that have a prior right over the securities covered by the offer to a distribution of the limited liability company's profits.

7 Accounts and reports

The following must be included in the prospectus –

(a) a copy of the limited liability company's latest accounts accompanied by a report by the limited liability company's auditors;

(b) any other reports of a specialist nature by any person who could be described as an expert on any aspect of the limited liability company's business, identifying any unusual element of risk to the investor.

8 Registered office and register of members

A prospectus must state the address of the limited liability company's registered office and (if different) the address at which its register of members is kept.

9 Principal establishments

A prospectus must state the location and nature of the limited liability company's principal operating establishments.

10 Manager and secretary

A prospectus must state –

(a) the names, business occupations (if any) and addresses of any manager or proposed manager of the limited liability company; and

(b) the name, qualifications (if any) and address of the secretary of the limited liability company.

11 Advisers

A prospectus must state –

(a) the name and address of the limited liability company's auditors;

(b) the name and address of the limited liability company's legal advisers;

(c) the name and address of the limited liability company's principal bankers.

12 Additional information

There must be included any other material information that an investor (including a person who cannot be expected to have any special knowledge of investments of the nature being offered) would reasonably require to enable the person to make an informed judgment about the merits of investing in the securities offered in the prospectus.

13 Date of issue

A prospectus must state the date of issue of the prospectus.

PART 2

STATEMENTS TO BE INCLUDED IN PROSPECTUS

The following statements must be included in a prospectus –

(a) "A copy of this document has been delivered to the registrar of companies in accordance with Regulation 30 of the Limited Liability Companies (General Provisions) (Jersey) Regulations 2022, and the registrar of limited liability companies has given, and has not withdrawn, consent to its circulation.";

(b) "The Jersey Financial Services Commission has given, and has not withdrawn, its consent under Article 11A of the Control of Borrowing (Jersey) Order 1958 to the issue of securities in, or the admission of persons to membership of, the limited liability company.";

(c) "It must be distinctly understood that, in giving these consents, neither the registrar of limited liability companies nor the Jersey Financial Services Commission take any responsibility for the financial soundness of the limited liability company or for the correctness of any statements made, or opinions expressed, with regard to it.";

(d) "If you are in any doubt about the contents of this document you should consult your stockbroker, bank manager, lawyer, accountant or other financial adviser.";

(e) "The managers of the limited liability company have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all

material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of facts or of opinion. All the managers accept responsibility accordingly.";

(f) "It should be remembered that the price of securities and the income from them can go down as well as up.".

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Limited Liability Companies (General Provisions) (Jersey) Regulations 2022	R&O.37/2022	1 September 2022 (L.32/2018)	P.31/2022
Limited Liability Companies (Amendment) (Jersey) Regulations 2023	R&O.12/2023	14 February 2023	P.118/2022
Companies (Jersey) Amendment Law 2026	L.8/2026	1 June 2026	P.106/2025

◦Projets available at statesassembly.gov.je

Table of Endnote References

[1] *Regulation 1(1)*	*renumbered and amended by R&O.12/2023, amended by L.8/2026*
[2] *Regulation 1(2)*	*inserted by R&O.12/2023*
[3] *Regulation 38(1)*	*editorial change, "Regulstion 41" deleted, "Regulation 41" inserted instead*
[4] *Regulation 40(3)*	*editorial change, in sub-paragraph (b), "a a choice" deleted, "a choice" inserted instead*
[5] *Regulation 42(3)*	*editorial change, "obligtions" deleted, "obligations" inserted instead*
[6] *Regulation 46(9)*	*editorial change, "liable to to a fine" deleted, "liable to a fine" inserted instead*
[7] *Regulation 73(4)*	*editorial change, "ths" deleted, "this" inserted instead*
[8] *Regulation 80(5)*	*amended by R&O.12/2023*
[9] *Regulation 87(1)*	*amended by R&O.12/2023*
[10] *Regulation 88(3)*	*editorial change, "Commisison" deleted, "Commission" inserted instead*
[11] *Regulation 95(1)*	*editorial change, "before before" deleted, "before" inserted instead*
[12] *Regulation 100(4)*	*editorial change, "in he statement" deleted, "in the statement" inserted instead*
[13] *Regulation 103*	*revised on 17 June 2026 by Law Revision Board item 2026/1*
[14] *Regulation 104*	*heading, editorial change, "court" deleted, "Court" inserted instead*
[15] *Regulation 104(1)*	*editorial change, ", ," deleted*
[16] *Regulation 117(2)*	*editorial change, in sub-paragraph (c), "erms" deleted, "terms" inserted instead*
[17] *Schedule*	*editorial change to heading, moved to above Part 1 heading, amended by R&O.12/2023*