

# PROJET DE LOI

ENTITLED

## **The Limited Partnerships (Guernsey) Law, 1995 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XII of 1995; as amended by the Income Tax (Limited Partnership Amendments) (Guernsey) Law, 1996 (No. V of 1996); the Limited Partnerships (Guernsey) (Amendment) Law, 1997 (No. IV of 2001); the Limited Partnerships (Guernsey) (Amendment) Law, 2006 (No. X of 2007); the Companies (Guernsey) Law, 2008 (No. VIII of 2008); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Limited Partnerships (Fees and Annual Return) Regulations, 2008 (G.S.I. No. 89 of 2008).

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## **The Limited Partnerships (Guernsey) Law, 1995**

### ARRANGEMENT OF SECTIONS

#### PART I

##### FORMATION OF LIMITED PARTNERSHIPS

1. Limited partnerships.
2. Constitution of limited partnerships.
3. Partnership agreement.
4. Liability of limited partnerships.
5. Name of limited partnership.
6. Registered office of limited partnership.
7. Register of Limited Partnerships.
8. Registration of limited partnerships.
9. Certificate of registration.
- 9A. Legal personality of limited partnerships.
- 9B. Transitional provisions for existing limited partnerships.
- 9C. Names of limited partnerships which have legal personality.
10. Change in registered particulars.
11. Effect of non-registration.

#### PART II

##### GENERAL PROVISIONS AS TO PARTNERS

12. Provisions as to limited partners.
13. Provisions as to general partners.

#### PART III

##### CONDUCT OF LIMITED PARTNERSHIPS

14. Institution of legal proceedings.
15. Records.
16. Appointment of auditors.
17. Qualification for appointment as auditor.
18. Auditors' report.

19. Auditors' powers and duties.
20. Partnership property to be held on trust.
21. Return of limited partner's contribution.
22. Dealings by limited partner with partnership.
23. Admission of additional limited partners.
24. Remedies for failure to execute documents, statements, etc.
25. Assignment of interest of limited partner.
26. Cases where person shall cease to be general partner.
27. Cases where person shall cease to be limited partner.

PART IV  
DISSOLUTION OF LIMITED PARTNERSHIPS

28. Dissolution of limited partnerships.
29. Dissolution of limited partnership by Royal Court.
30. General provisions as to dissolution of limited partnerships.
31. Personal liability for certain defaults in event of insolvency.
32. Distribution of assets upon dissolution.

PART V  
MISCELLANEOUS PROVISIONS

33. Application of general partnership law.
34. Criminal and civil liability for false statements.
35. Exclusion of liability for certain public officers.
36. Fees.
37. Restrictions on use of certain descriptions and names.
38. Contravention of conditions of Committee's consent.
39. Offences by bodies corporate, etc.
40. Penalties.
41. Interpretation.
42. Service of documents on limited partnerships and general partners.
43. Power to make regulations.
44. General provisions as to regulations.
45. Amendments.
46. Power of Committee to delegate functions.
47. Repeals.
48. Citation.
49. Commencement.

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## **The Limited Partnerships (Guernsey) Law, 1995**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> day of July, 1994<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### PART I

#### FORMATION OF LIMITED PARTNERSHIPS

##### **Limited partnerships.**

1. (1) A limited partnership may, subject to compliance with the requirements of this Law as to registration, be formed in Guernsey for the carrying on within Guernsey or elsewhere of any lawful business.

(2) A limited partnership shall have a continuous and successive existence in the persons of its partners present and future until its dissolution.

##### **Constitution of limited partnerships.**

2. (1) A limited partnership shall consist of –

(a) one or more general partners who –

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<sup>a</sup> Article XIII of Billet d'État No. XVI of 1994.

*Consolidated text*

- (i) are admitted to the partnership as general partners in accordance with the partnership agreement, and
  - (ii) shall be jointly and severally liable for all debts of the partnership without limitation, and
- (b) one or more limited partners who –
  - (i) are admitted to the partnership as limited partners in accordance with the partnership agreement,
  - (ii) upon entering the partnership, contribute or agree to contribute to the capital thereof a specified sum, and
  - (iii) subject to the provisions of sections 5(3), 12(3) and 21(2), shall not be liable for any debts of the partnership beyond the amount so contributed or agreed to be contributed.
- (2) A person may be both a general partner and a limited partner.
- (3) A body corporate or (provided that it has capacity to do so) a partnership may be a general partner or a limited partner.
- (4) The contribution of a limited partner may be satisfied by the provision of money or property but not of services or loans; and, where property is so provided, the value of the property shall be deemed to be its fair market value at

the time of its transfer to the partnership.

**Partnership agreement.**

3. (1) Every limited partnership shall have a partnership agreement.

(2) The partnership agreement shall be an agreement in writing of the partners as to the affairs of the partnership and the conduct of its business.

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

(4) A partnership agreement may (without prejudice to any other formalities required by law or by the agreement itself) be amended only by an instrument in writing.

(5) All amendments duly made to a partnership agreement shall be binding upon the persons and in the manner mentioned in subsection (3).

**Liability of limited partnerships.**

4. Subject to the provisions of section 2(1) –

(a) the acts of a general partner in connection with the business of the limited partnership shall bind the partnership in all respects,

(b) every partner is liable jointly and severally with the other partners for all debts of the limited partnership incurred while he is a partner,

*Consolidated text*

(c) where by any wrongful act or omission of a partner acting in the ordinary course of the business of the limited partnership –

(i) loss, damage or injury is caused to any person other than a partner, or

(ii) any penalty is incurred,

the partnership is liable therefor to the same extent as that partner,

(d) in the following cases, namely –

(i) where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it, or

(ii) where a limited partnership in the course of its business receives the money or property of a third person and the money or property, whilst in the custody of the partnership, is misapplied by any partner,

the partnership is liable for the loss, and

(e) subject to the provisions of the partnership agreement, a limited partnership may indemnify any partner or other person from and against all or any claims, demands and debts whatsoever.

**Name of limited partnership.**

5. (1) The name of a limited partnership –
- (a) shall be stated in its certificate of registration,
  - (b) shall contain the words "Limited Partnership" or the abbreviation "L.P." or "LP",
  - (c) shall not be the same as a name already appearing in –
    - (i) the Register, or
    - (ii) the Register of Companies incorporated with Limited Liability,
- and for the purposes of this paragraph any expression set out in paragraph (b), and the words "limited", "with limited liability" and "avec responsabilité limitée", shall be disregarded,
- (d) shall not constitute a criminal offence or be offensive, misleading or inappropriate in relation to the partnership,
  - (e) shall not include any word such as "Imperial", "Royal", "Queen" or "Crown" which implies or might be taken to imply royal or government connection, support or patronage, unless Her Majesty's Procureur has given written permission for the use of that word.



(2) The name or a distinctive part of the name of a limited partner shall not form or be used as part of the name of a limited partnership.

(3) A limited partner who knowingly permits his name or a distinctive part of his name to be used in the name of a limited partnership shall be liable as a general partner to any person who extends credit to the partnership without actual knowledge that the limited partner is not a general partner.

(4) The Royal Court, if satisfied that –

- (a) the name of a limited partnership is such as to induce the public to confuse the partnership with some other person or body previously established in Guernsey or elsewhere, or
- (b) in relation to the name of a limited partnership, any provision of subsection (1) or (2) [or section 9C] is not complied with,

may order that, within such time and subject to such terms, conditions and penalty as the Court thinks fit, the name of the partnership shall be changed.

(5) If an order of the Royal Court under subsection (4) is not complied with in any respect –

- (a) the partnership and each general partner thereof shall be guilty of an offence, and
- (b) the partnership shall be liable to be dissolved by order

of the Royal Court under section 29(1).

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**NOTE**

*In section 5, the words, figure and letter in square brackets in paragraph (b) of subsection (4) were inserted by the Limited Partnerships (Guernsey) (Amendment) Law, 1997, section 1(2), with effect from 1st May, 2001.*

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**Registered office of limited partnership.**

6. (1) Every limited partnership shall at all times have a registered office in Guernsey.

(2) The registered office may be (but need not be) a place of the partnership's business.

(3) All legal process and other notices or documents served at the registered office shall be deemed properly served on the limited partnership.

(4) The Greffier shall be notified of any change in the registered office of a limited partnership in accordance with the provisions of section 10(1).

(5) A notice stating the name of the limited partnership shall be displayed in legible characters outside its registered office or in a conspicuous position in a place within its registered office to which the general public have access during ordinary business hours.

(6) If in relation to a limited partnership there is a contravention of any provision of subsection (1) or (5), the partnership and each general partner thereof shall be guilty of an offence.

**Register of Limited Partnerships.**

7. (1) The Greffier shall establish and thereafter maintain a Register of Limited Partnerships ("**the Register**").

(2) The Register shall contain a record of –

- (a) all limited partnerships registered under section 8, and
- (b) all declarations and other documents filed with the Greffier under or for the purposes of this Law.

(3) The Register shall be part of the public records of the Island of Guernsey.

**Registration of limited partnerships.**

8. (1) Every limited partnership shall be registered and shall continue to be registered in accordance with this section.

(2) A person wishing to effect the registration of a limited partnership shall file with the Greffier –

- (a) the written consent for the registration of the partnership given by the Committee under section 7A of the Control of Borrowing Ordinance,
- (b) ...
- (c) the fee specified in section 36, and
- (d) a declaration signed by any one or more of the general

*Consolidated text*

partners of the following particulars –

- (i) the name of the limited partnership,
- (ii) the nature and principal place of its business,
- (iii) its registered office,
- (iv) the full name of every general partner and his address (being, in the case of a body corporate or a partnership, the address of its registered office or, if none, its principal office),
- (v) the term for which the partnership is entered into and the date of the commencement of that term or, if no term is fixed for the duration of the partnership, a statement to that effect (in which case the partnership shall, unless dissolved earlier, be dissolved upon the expiration of a period of 30 years beginning on the date of its registration), and
- (vi) such other particulars as may be prescribed or as the general partners may decide to include in the declaration.

(3) Upon receipt of the fee and documents specified in subsection (2) the Greffier shall –

- (a) register the partnership in the Register by inscribing

its name therein, and

- (b) allocate a registration number to the partnership,

and thereupon the partnership shall be deemed to have been registered as a limited partnership for the purposes of this Law.

(4) The Royal Court may, in its absolute discretion and on such terms and conditions as it thinks fit, on an application by or on behalf of any partner of a limited partnership, by order authorise the rectification of any error or formal defect –

- (a) in the entries relating to the partnership in the Register, or
- (b) in any declaration or other document filed with the Greffier in relation to the partnership under or for the purposes of this Law.

(5) The Greffier, when registering a limited partnership in the Register under this section, and when issuing a certificate of registration in relation to the partnership under section 9 or 10, may rely upon the documents filed with him in all respects and shall not be bound to enquire further as to whether, in relation to the partnership, the formalities prescribed by this Law have been complied with.

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**NOTES**

*In section 8, paragraph (b) of subsection (2) was repealed by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 1, with effect from 2nd July, 2007.*

*Section 7A of the Control of Borrowing Ordinance has since been repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 33(b), with effect from 29th October, 2008.*

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**Certificate of registration.**

9. (1) The Greffier shall, upon registration of a limited partnership, issue to the general partners a certificate of registration stating the partnership's name and registered office and the date of registration.

(2) A certificate of registration is, unless it has ceased to be valid, conclusive evidence of compliance with the requirements of this Law as to registration and of all matters stated in it.

(3) A certificate of registration shall cease to be valid –

(a) if the consent for the registration or continued registration of the limited partnership given under section 7A of the Control of Borrowing Ordinance is revoked by the Committee or if the said consent expires or otherwise ceases to be valid,

(b) in the circumstances described in section 10(1), 24(3) or 30(8)(c).

(4) A certificate of registration, or a copy thereof issued and sealed by the Greffier, shall be received in evidence in all legal proceedings.

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**NOTE**

*Section 7A of the Control of Borrowing Ordinance has since been repealed*

*by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 33(b), with effect from 29th October, 2008.*

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**[Legal personality of limited partnerships.**

**9A.** (1) A limited partnership shall have legal personality if and only if, at the time of registration, the general partners so elect in accordance with the provisions of this section.

(2) Where the general partners wish to elect that a limited partnership shall have legal personality, they shall, when effecting registration of the partnership under section 8, file with the Greffier, in addition to the fee and other documents specified in section 8(2), a declaration signed by any one or more of the general partners stating that the limited partnership shall have legal personality.

(3) Where the general partners –

(a) elect, in accordance with the provisions of this section, that a limited partnership shall have legal personality –

(i) the partnership shall have legal personality, and

(ii) the Register and certificate of registration shall state that fact,

(b) do not so elect –

(i) the partnership shall not have legal personality, and

- (ii) the Register and certificate of registration shall state that fact.

(4) An election made in accordance with the provisions of this section that a limited partnership shall have legal personality shall be irrevocable; and a failure to make such an election shall be final.

[(5) For the avoidance of doubt and notwithstanding the provisions of section 1(2), a limited partnership with legal personality is a body corporate.]]

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**NOTES**

*Section 9A was inserted by the Limited Partnerships (Guernsey) (Amendment) Law, 1997, section 1(1), with effect from 1st May, 2001.*

*In section 9A, subsection (5) was inserted by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 2, with effect from 2nd July, 2007.*

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**[Transitional provisions for existing limited partnerships.]**

**9B.** (1) Notwithstanding the provisions of section 9A, a limited partnership registered prior to the day of commencement of the Limited Partnerships (Guernsey) (Amendment) Law, 1997 shall have legal personality if and only if, within a period of three months beginning on that day, the general partners so elect in accordance with the provisions of this section.

(2) Where the general partners of such a limited partnership wish to elect that the partnership shall have legal personality, they shall, within the period specified in subsection (1), file with the Greffier a declaration signed by any one or more of the general partners stating that the limited partnership shall have



legal personality.

- (3) Where the general partners –
  - (a) elect, in accordance with the provisions of this section, that a limited partnership shall have legal personality –
    - (i) the partnership shall have legal personality,
    - (ii) the Register shall be amended to state that fact, and
    - (iii) a new certificate of registration shall be issued stating that fact,
  - (b) do not so elect –
    - (i) the partnership shall not have legal personality,
    - (ii) the Register shall be amended to state that fact, and
    - (iii) a new certificate of registration shall be issued stating that fact,

and thereupon the original certificate of registration shall cease to be valid.

(4) An election made in accordance with the provisions of this section that a limited partnership shall have legal personality shall be irrevocable; and a failure to make such an election shall be final.]

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**NOTES**

*Section 9B was inserted by the Limited Partnerships (Guernsey) (Amendment) Law, 1997, section 1(1), with effect from 1st May, 2001.*

*The Limited Partnerships (Guernsey) (Amendment) Law, 1997 was brought into force on 1st May, 2001 by the Limited Partnerships (Guernsey) (Amendment) Law, 1997 (Commencement) Ordinance, 2001, section 1.*

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**[Names of limited partnerships which have legal personality.]**

**9C.** Without prejudice to the provisions of section 5, the name of a limited partnership which, pursuant to the provisions of section 9A or 9B, has legal personality shall contain, at the end of the name, the word "Incorporated" or any cognate expression approved in writing by the Commission.]

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**NOTE**

*Section 9C was inserted by the Limited Partnerships (Guernsey) (Amendment) Law, 1997, section 1(1), with effect from 1st May, 2001.*

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**Change in registered particulars.**

- 10.** (1) If during the continuance of a limited partnership –
- (a) there is a change in any particular referred to in section 8(2)(d), or
  - (b) a person becomes or ceases to be a general partner,

notice of the change signed by any one or more of the general partners shall, within a period of 21 days beginning on the date of the change, be filed with the Greffier; and, where the change is to the partnership's name or registered office, the change

shall not be effective until the Greffier has issued a new certificate of registration, upon the issue of which the existing certificate shall cease to be valid.

- (2) In default of compliance with subsection (1) –
  - (a) the partnership and each general partner thereof shall be guilty of an offence, and
  - (b) the change may not be relied on by the partnership or by any general partner or former general partner thereof so as to affect adversely the rights of any third person or limited partner.

(3) Upon receipt of notice under subsection (1) or as soon as is reasonably practicable thereafter, the Greffier shall make the appropriate entry in the Register.

**Effect of non-registration.**

**11.** (1) In default of registration or continuing registration of a limited partnership in accordance with the provisions of section 8 –

- (a) the partnership shall be deemed not to be a limited partnership, and
- (b) every partner in the firm shall be deemed to be a general partner.

(2) This section is without prejudice to the provisions of this Law in relation to the dissolution of limited partnerships.

PART II  
GENERAL PROVISIONS AS TO PARTNERS

**Provisions as to limited partners.**

12. (1) A limited partner –
- (a) shall not participate in the conduct or management of the business of the limited partnership,
  - (b) shall not transact the business of, sign or execute documents for or otherwise bind the limited partnership.
- (2) A limited partner may however, subject to the provisions of the partnership agreement –
- (a) inspect the books of the limited partnership,
  - (b) with such assistance as may reasonably be required of the general partners, examine and inquire into the state and prospects of the partnership business, and
  - (c) advise the partners thereon.
- (3) A limited partner who in whatever capacity acts or purports to act in contravention of subsection (1) shall be liable as if he were a general partner in respect of all debts of the limited partnership incurred while he so acts or purports to act.
- (4) A limited partner shall not be deemed to have participated in

*Consolidated text*

the conduct or management of the business of a limited partnership within the meaning of this section by reason only of any one or more of the following circumstances –

- (a) he is a contractor, agent or employee of the limited partnership or of a general partner,
- (b) he acts as a director, officer or shareholder of a corporate general partner,
- (c) he acts as a partner in a partnership which itself is a general partner,
- (d) he consults with and advises a general partner as to the business of the limited partnership,
- (e) he investigates, reviews, approves or is advised as to the accounts or affairs of the limited partnership,
- (f) he exercises any right or power conferred on limited partners by this Law,
- (g) he acts as surety or guarantor or provides any other form of security for the limited partnership, generally or in respect of specific debts,
- (h) he approves or disapproves an amendment to the partnership agreement,
- (i) he files a declaration under section 8(2)(d),

*Consolidated text*

- [(j) he requires the appointment or removal of an auditor, or applies to the Royal Court for the appointment or removal of an auditor, under section 16, or]
  
- (k) he votes as a limited partner on any of the following matters –
  - (i) the dissolution of the limited partnership,
  
  - (ii) the acquisition, sale, transfer, exchange, lease or charging of or other dealing with any property or assets by or of the limited partnership,
  
  - (iii) the incurrence, renewal, repayment or discharge of any debt by the limited partnership,
  
  - (iv) any change in the nature of the business, objectives or policies of the limited partnership,
  
  - (v) the admission, removal, retirement or resignation of a general or limited partner and the continuation of the limited partnership thereafter, or
  
  - (vi) any transaction in which a general partner has an actual or potential conflict of interest with a

limited partner.

(5) A limited partner has, subject to the provisions of the partnership agreement, the same right as a general partner –

- (a) to inspect, make copies of and take extracts from the partnership books at all times,
- (b) to be given, on demand, true and full information of all things affecting the partnership, and
- (c) to be given a formal account of partnership affairs whenever circumstances render it just and reasonable,

and, notwithstanding anything to the contrary in the partnership agreement, a limited partner also has the same right as a general partner to have the partnership dissolved by order of the Royal Court under section 29(1).

(6) The provisions of subsection (4) shall not be taken as implying that, if a limited partner exercises any other right, power or function, he has necessarily, by reason of that fact alone, participated in the conduct or management of the business of the limited partnership within the meaning of this section.

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**NOTE**

*In section 12, paragraph (j) of subsection (4) was substituted by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 3(2), with effect from 2nd July, 2007.*

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**Provisions as to general partners.**

13. (1) Subject to the provisions of subsection (2), a general partner has all rights, powers and duties and is subject to all restrictions, obligations and liabilities of a partner in a partnership which is not a limited partnership.

(2) A general partner may not, without the written consent of all limited partners –

(a) do anything which makes it impossible to carry on the business of the partnership,

(b) deal in any manner with any property of the partnership or in which the partnership has any interest, or dispose of any rights in any such property, for any purpose other than a partnership purpose, or

(c) admit a person as a partner, unless the right to do so is conferred by the partnership agreement.

(3) Any debt incurred by a general partner in the conduct of the business of a limited partnership shall be a debt of the partnership.

(4) Any difference arising as to ordinary matters connected with the business of a limited partnership may, subject to the provisions of the partnership agreement, be decided by a majority of the general partners.

PART III

CONDUCT OF LIMITED PARTNERSHIPS

**Institution of legal proceedings.**



**14.** (1) Legal proceedings by, against or otherwise in relation to a limited partnership (including proceedings to enforce a foreign judgment by or against the partnership) may only be instituted by or against any one or more of the general partners; and, subject to the provisions of subsections (2) and (3), no limited partner shall be a party to or named in such proceedings.

(2) The provisions of subsection (1) are without prejudice to the right of any person to join or otherwise institute proceedings against a limited partner –

- (a) who is liable for any debt of the partnership pursuant to section 5(3) or 12(3), or
- (b) to obtain payment of his contribution or repayment of any amount pursuant to section 21(2).

(3) A limited partner may, with leave of the Royal Court, institute proceedings on behalf of a limited partnership if –

- (a) the general partners have, without good cause, failed or refused to do so, and
- (b) the failure or refusal is oppressive to the limited partner or is prejudicial to his interests as a limited partner.

**Records.**

**15.** (1) A limited partnership shall keep the following or a copy thereof at its registered office –

*Consolidated text*

- (a) the partnership agreement and every amendment thereof,
- (b) a register of all persons who are limited partners (referred to in this Law as "**the register of limited partners**") showing their full names and addresses,
- (c) the capital account of each limited partner showing whichever of the following is applicable in relation to him –
  - (i) the amounts and dates of his contributions,
  - (ii) the amounts agreed to be contributed and the times at which or events upon which the contributions are to be made,
  - (iii) the amounts and dates of any payments representing a return of his contributions or any part thereof,
  - (iv) where an agreement to make a contribution is released in whole or in part, the amount and date of the release,
- (d) its accounting records, which shall be –
  - (i) sufficient to show and explain the partnership's transactions,

*Consolidated text*

(ii) such as to disclose with reasonable accuracy, at any time, the partnership's financial position at that time, and

(iii) such as to enable the general partners to ensure that the partnership's balance sheet and profit and loss account are prepared properly and in accordance with any relevant enactment for the time being in force,

and the accounting records shall in particular contain day to day entries of all sums of money received and expended by the partnership and the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the partnership,

(e) the minutes of all meetings of the general partners, and

(f) all documents from time to time filed with the Greffier (including, without prejudice to the generality of the foregoing, the declaration referred to in section 8(2)(d)).

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

(3) The documents described in paragraphs (b) and (c) of

subsection (1) shall be prima facie evidence of the matters required to be stated therein.

(4) Notwithstanding the foregoing provisions of this section, the documents described in paragraph (d) of subsection (1) may, instead of being kept at the partnership's registered office, be kept at such other place as the general partners think fit where they shall, subject to the provisions of the partnership agreement, be available for inspection by any partner during ordinary business hours.

(5) If the documents referred to in subsection (4) are kept at a place outside Guernsey, accounts and returns in respect of the business dealt with in them shall be sent to, and kept at, a place in Guernsey, where they shall, subject to the provisions of the partnership agreement, be available for inspection by any partner during ordinary business hours.

(6) The accounts and returns to be sent to and kept in Guernsey in accordance with subsection (5) shall be such as to –

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals not exceeding 6 months, and
- (b) enable the general partners to ensure that the partnership's balance sheet and profit and loss account are prepared properly and in accordance with any relevant enactment for the time being in force.

(7) Any accounting records which a partnership is required by this section to keep shall be preserved by it for a period of at least 6 years from the

date on which they are made.

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

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

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

(10) If in respect of a partnership there is a contravention of any provision of this section, the partnership and each general partner thereof shall be guilty of an offence.

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

of the recording in a legible form.

**[Appointment of auditors.]**

**16.** (1) The general partners of every limited partnership may, subject to the provisions of any regulations made under section 43(f)(ii), appoint an auditor to act in relation to the affairs of the partnership.

(2) The general partners of a limited partnership shall, subject to the provisions of any regulations made under section 43(f)(ii), appoint an auditor to act in relation to the affairs of the partnership if –

- (a) required to do so by the partnership agreement,
- (b) required to do so by limited partners whose contribution is greater than 50 per cent of the total contribution of all limited partners,
- (c) required to do so in such circumstances, or by such body, as may be prescribed, or
- (d) the limited partnership is one to which subsection (3) applies.

(3) Subject to subsection (4), this subsection applies to limited partnerships carrying on the business of, or concerned in the provision of the services of –

- (a) banking,
- (b) insurance,

- (c) investment,
- (d) asset management or administration,
- (e) trusteeship, or
- (f) company or trust formation or administration.

(4) Without prejudice to section 7A(1) of the Control of Borrowing Ordinance (conditions imposed upon limited partnerships upon registration), subsection (3) shall not apply where –

- (a) the limited partnership is a closed-ended limited partnership within the meaning of paragraph 1 of Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>ab</sup>, and
- (b) the partnership agreement requires information on the state and prospects of the assets of the partnership business to be provided to the limited partners in relation to each financial year of the partnership.

(5) An auditor may be removed from office –

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

- (a) where he has been appointed under subsection (1), by the general partners,
- (b) where he has been appointed under subsection (2)(a), if it is no longer required by the partnership agreement,
- (c) where he has been appointed under subsection (2)(b), by limited partners whose contribution is greater than 50 per cent of the total contribution of all limited partners,
- (d) where he has been appointed under subsection (2)(c), in such circumstances, or by such body, as may be prescribed,
- (e) where he has been appointed under subsection (2)(d), if the partnership is no longer one to which subsection (3) applies.

(6) The Royal Court may, on the application of any partner or creditor of a limited partnership, remove from office any auditor of the partnership, and appoint another to act in his place.

(7) Where –

- (a) an auditor is appointed under subsection (2),
- (b) that auditor has not been removed from office under



subsection (5), and

- (c) at any time no auditor is acting in relation to the affairs of the partnership,

the Royal Court may, on the application of any partner or creditor of the partnership, appoint an auditor to act.

(8) The remuneration of a partnership's auditors shall be determined by the general partners or, where the auditors are appointed by the Royal Court, by the Royal Court.

(9) For the avoidance of doubt, the removal from office of an auditor shall not affect any rights that the auditor has against the partnership.]

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**NOTES**

*Section 16 was substituted by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 3(1), with effect from 2nd July, 2007.*

*Section 7A of the Control of Borrowing Ordinance has since been repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 33(b), with effect from 29th October, 2008.*

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**[Qualification for appointment as auditor.]**

17. Section 260 of the Companies (Guernsey) Law, 2008 (qualification for appointment as auditor) applies to limited partnerships as it applies to companies under that Law.]

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**NOTE**

*Section 17 was substituted by the Companies (Guernsey) Law, 2008, section*

*543, Schedule 5, paragraph 1(1), with effect from 1st July, 2008.<sup>1</sup>*

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**Auditors' report.**

**18.** (1) Subject to the provisions of any regulations made under section 43(f)(ii), the auditors of a limited partnership shall, in relation to each financial year of the partnership, make a report (an "**auditors' report**") to the partners on the accounts examined by them and on every balance sheet and profit and loss account of the partnership during their term of office; and that report shall be made available to the partners.

- (2) The auditors' report shall state –
  - (a) whether in the auditors' opinion the balance sheet and profit and loss account have been prepared properly and in accordance with any relevant enactment for the time being in force, and
  - (b) without prejudice to the foregoing, whether in their opinion a true and fair view is given –
    - (i) in the balance sheet, of the state of the partnership's affairs at the end of the financial year to which it relates, and
    - (ii) in the profit and loss account, of the partnership's profit or loss for that financial year.
- (3) An auditors' report made in relation to a limited partnership

together with the audited accounts thereof shall be deposited with the Commission within a period of [six months or such shorter period as may be required in the partnership agreement] (or such other period as the Commission may by notice in writing allow in any particular case) immediately following the last day of the financial year to which the report relates.

(4) Where in relation to a limited partnership there is a contravention of subsection (3), the partnership and each general partner thereof shall be guilty of an offence.

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**NOTE**

*In section 18, the words in square brackets in subsection (3) were substituted by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 5, with effect from 2nd July, 2007.*

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**Auditors' powers and duties.**

**19.** (1) A partnership's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to whether –

- (a) proper accounting records have been kept by the partnership, and
- (b) the partnership's balance sheet and profit and loss account are in agreement with its accounting records.

(2) Every auditor of a limited partnership has a right of access at all times to the partnership's books, accounts and vouchers and may require from the partnership's general partners and officers such information and explanations as he thinks necessary for the performance of his duties.

- (3) If a limited partnership's auditors are of the opinion that –
- (a) proper accounting records have not been kept,
  - (b) the balance sheet or the profit and loss account is not in agreement with the accounting records,
  - (c) any report of the general partners is inconsistent with the balance sheet or the profit and loss account, or
  - (d) they have failed to obtain all access, information and explanations necessary for their audit,

they shall state that fact in their auditors' report.

**Partnership property to be held on trust.**

**20.** Any property of a limited partnership which is –

- (a) transferred to, vested in or held on behalf of any general partner, or
- (b) transferred to or vested in the name of the partnership,

shall be held or, as the case may be, deemed to be held by the general partners jointly on trust as an asset of the partnership in accordance with the terms of the partnership.

**Return of limited partner's contribution.**

**21.** (1) A limited partner shall not, on dissolution or otherwise,

receive from the capital of a limited partnership any payment representing a return of any part of his contribution to the partnership unless, at the time of and immediately following the making of the payment, the limited partnership is solvent.

(2) Where the limited partnership is insolvent at the time of or immediately following the making of any such payment, or in the event of the insolvency of the partnership within a period of 6 months immediately following the time of the making of any such payment, the payment shall, for a period of one year from the date of its receipt by the partner, be repayable by him to the extent necessary to discharge any debt of the partnership incurred at a time when his contribution formed part of the partnership assets.

(3) Subject to subsections (1) and (2), a limited partner may demand the return of his contribution –

- (a) on the dissolution of the limited partnership, or
- (b) at such time or upon the occurrence of such event as may be specified in that behalf in the partnership agreement.

(4) A partner may, notwithstanding the nature of his contribution, demand and receive only money in return, unless –

- (a) there is a statement to the contrary in the partnership agreement, or
- (b) all partners agree otherwise.

(5) Any reference in this section, however expressed, to the receipt by a partner of a payment shall include a reference to the release of any debt owed by him and forming part of the partnership assets (including any obligation on his part to make a contribution to the capital of the partnership); and accordingly any reference in subsection (2) to the making of a repayment by a partner shall be deemed to include a reference to the due performance or discharge by him of the debt or obligation.

(6) For the purposes of this section the expression "**solvent**" means that the limited partnership is able to pay its debts (other than debts described in subparagraphs (ii) to (v) of section 32(c)) in full, as they fall due, out of the partnership assets without recourse to the separate assets of the general partners not contributed to the partnership; and the expression "**insolvent**" and other cognate expressions shall be construed accordingly.

(7) A distribution of any assets of a limited partnership to a limited partner shall be deemed to be a return of contribution for the purposes of subsection (1) to the extent that the distribution reduces the value of his share of the partnership's assets, calculated on the basis of the value of the partnership's net assets, below the value of the amount contributed or agreed to be contributed by him.

(8) The provisions of this section are subject to those of section 32.

**Dealings by limited partner with partnership.**

22. A limited partner may lend money to, borrow money from and enter into transactions with the limited partnership.

**Admission of additional limited partners.**

23. A person shall not be admitted to a limited partnership as a limited partner except –

- (a) in accordance with the provisions of the partnership agreement,
- (b) by execution of an agreement in writing, and
- (c) by entry in the register of limited partners.

**Remedies for failure to execute documents, statements, etc.**

24. (1) If in respect of a limited partnership there is a failure or refusal –

- (a) to make or give any statement, declaration or notice required by or under any provision of this Law, any regulation made under it or the Control of Borrowing Ordinance, or
- (b) to execute a partnership agreement or any amendment thereof or any other document relating to the business or affairs of the partnership,

any person adversely affected by the failure or refusal may apply to the Royal Court for an order directing –

- (i) that the statement, declaration or notice shall be made or given, or that the agreement, amendment or other document shall be executed, by such person within such time as

may be specified in the order,

- (ii) the deletion from the Register of the particulars of registration of the partnership.

(2) An order under subsection (1) may authorise the Greffier to delete, amend or make any entry in the Register.

(3) Upon the making of an order under subsection (1)(ii), the partnership shall be dissolved and its certificate of registration shall cease to be valid.

(4) An order under this section may contain such ancillary provision as the Royal Court thinks fit.

(5) A person who fails to comply with any provision of an order of the Royal Court under this section shall be guilty of an offence.

(6) An application may be made to the Royal Court under subsection (1) notwithstanding the existence of any other penalty, remedy or proceedings (whether civil or criminal) in respect of the failure or refusal.

**Assignment of interest of limited partner.**

**25.** Subject to the provisions of the partnership agreement –

- (a) a partnership interest of a limited partner is assignable in whole or in part,
- (b) an assignment by a limited partner of his partnership interest or any part thereof –



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- (i) shall not dissolve the limited partnership,
  - (ii) shall not be valid unless made in accordance with the requirements (if any) of the partnership agreement,
  - (iii) shall not, unless and until the assignee is admitted to the partnership as a limited partner in accordance with the provisions of section 23, entitle the assignee to become or to exercise any right or power of a limited partner,
  - (iv) shall, upon the assignee being admitted to the partnership as a limited partner in accordance with the provisions of section 23, entitle the assignee to the rights and powers and, subject to subparagraph (v), render him subject to the restrictions, liabilities and obligations (including any obligation to make contributions to the capital of the partnership) to which the assignor was entitled or subject in respect of the interest assigned immediately before the assignment,
  - (v) shall not relieve the assignor of any liability arising pursuant to section 5(3), 12(3) or 21(2),
- (c) a limited partner, upon the valid and absolute

assignment of the whole of his partnership interest and his removal from the register of limited partners, shall cease –

- (i) to be a limited partner, and
- (ii) to be entitled to exercise any right or power of a limited partner.

**Cases where person shall cease to be general partner.**

**26.** A person shall, subject to the provisions of the partnership agreement, cease to be a general partner of a limited partnership upon the occurrence of any of the following events –

- (a) his resignation, retirement or removal in accordance with the requirements (if any) of the partnership agreement,
- (b) his bankruptcy,
- (c) in the case of a general partner who is a natural person –
  - (i) his death, or
  - (ii) his legal incapacity,
- (d) in the case of a general partner which is a separate partnership or a corporation, the dissolution thereof,

- (e) in the case of a general partner who is acting as such by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee).

**Cases where person shall cease to be limited partner.**

27. (1) A person shall cease to be a limited partner –
- (a) upon the valid and absolute assignment of the whole of his partnership interest,
  - (b) upon the return of the whole of his contribution (including, if appropriate, the release of all obligations on his part to make a contribution), or
  - (c) at such time or upon the occurrence of such event as may be specified in that behalf in the partnership agreement,

provided that, in each case, his name is removed from the register of limited partners.

(2) The fact that a person has ceased to be a limited partner shall not relieve him of any liability arising pursuant to section 5(3), 12(3) or 21(2).

PART IV

DISSOLUTION OF LIMITED PARTNERSHIPS

**Dissolution of limited partnerships.**

28. (1) A limited partnership shall be dissolved upon the occurrence

of any of the following –

- (a) upon the happening of any event specified in that behalf in the partnership agreement,
- (b) upon the expiration of its fixed term, unless notice of its continuance is filed with the Greffier not less than 15 days before the date of expiration,
- (c) if no term is fixed for the duration of the partnership, upon the expiration of a period of 30 years beginning on the date of its registration,
- (d) upon the written agreement of all partners that the partnership shall be dissolved,
- (e) upon the death, legal incapacity, retirement, resignation, removal, bankruptcy or dissolution of a general partner, unless –
  - (i) the partnership agreement permits the partnership business to be carried on by the remaining general partners and there is at the time of the death or other said event at least one other general partner who does so carry on the partnership business,
  - (ii) another general partner is validly appointed to the partnership immediately upon the death or other said event, or

*Consolidated text*

- (iii) within a period of 90 days immediately following the date of the death or other said event, all remaining partners agree in writing to the continuation of the partnership business and to the appointment, effective as from that date, of such additional general partners as may be necessary or desirable,
- (f) upon the revocation by the Committee of its consent for the registration or continued registration of the partnership given under section 7A of the Control of Borrowing Ordinance or upon the said consent expiring or otherwise ceasing to be valid, or
- (g) upon the making by the Royal Court of an order –
  - (i) under section 24(1)(ii) directing the deletion from the Register of the particulars of registration of the partnership, or
  - (ii) under section 29(1) for the dissolution of the partnership.
- (2) Subject to the provisions of the partnership agreement –
  - (a) a limited partnership shall not be dissolved by –
    - (i) any change in the limited partners, or

- (ii) the bankruptcy, death, retirement, removal, resignation, legal incapacity or dissolution of any limited partner, whether an individual, partnership or body corporate, and
- (b) a limited partner may not dissolve a limited partnership by notice.

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**NOTE**

*Section 7A of the Control of Borrowing Ordinance has since been repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 33(b), with effect from 29th October, 2008.*

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**Dissolution of limited partnership by Royal Court.**

29. (1) The Royal Court may order the dissolution of a limited partnership on the application of any partner or creditor thereof or on the application of the Committee or Commission if in its opinion –

- (a) it is not reasonably practicable to carry on the partnership's business in conformity with the partnership agreement,
- (b) the partnership is insolvent,
- (c) without prejudice to the generality of paragraph (b), the following conditions are satisfied –
  - (i) the partnership is indebted to a creditor in a sum exceeding £750 or such other sum as may

*Consolidated text*

be prescribed,

- (ii) the creditor has, by Her Majesty's Sergeant, served a signification on the partnership demanding payment of the debt, and
  - (iii) the partnership does not, within a period of 21 days immediately following the date of service of that demand, pay the debt or give security for it to the creditor's satisfaction,
- (d) there has been, in relation to the partnership, a failure to comply with any provision of an order of the Royal Court under section 5(4),
- (e) the partnership is being conducted in a manner which is –
- (i) oppressive to any of the limited partners or prejudicial to their interests as limited partners, or
  - (ii) calculated to affect prejudicially the carrying on of the partnership business,
- (f) the limited partners are not being given all information relating to the affairs of the partnership which they might reasonably expect,
- (g) the affairs of the partnership are being conducted in

such a way as to defraud creditors (whether of the partnership or of any other person) or in an unlawful manner,

- (h) there has been persistent default by the partnership or by any general partner thereof in complying with the requirements or conditions imposed by or under this Law, any regulation made under it or the Control of Borrowing Ordinance,
- (i) persons connected with the formation or management of the partnership have, in connection therewith, been guilty of fraud, misfeasance, breach of fiduciary duty or other misconduct in relation to the partnership or any partner thereof, or
- (j) it is just and equitable to do so.

(2) Upon the making of an order under subsection (1) for the dissolution of a limited partnership or at any time thereafter, the Royal Court may make such other orders in relation to the dissolution as it thinks fit, including one for the appointment of one or more liquidators to wind up the partnership's affairs and distribute its assets.

**General provisions as to dissolution of limited partnerships.**

**30.** (1) Upon the dissolution of a limited partnership its affairs shall, unless a liquidator has been appointed by the Royal Court under section 29(2) or under subsection (3), be wound up by the general partners.

(2) Upon the dissolution of a limited partnership no limited



partner may, except in accordance with the provisions of sections 21 and 32 –

(a) withdraw any part of his contribution, or

(b) otherwise claim as a creditor of the partnership.

(3) Upon the dissolution of a limited partnership or at any time thereafter, the Royal Court may, on the application of any partner or assignee thereof or any creditor, make such orders in relation to the dissolution as it thinks fit, including one for the appointment of one or more liquidators to wind up the partnership's affairs and distribute its assets.

(4) On the appointment of a liquidator (whether under this section or under section 29) all powers of the general partners cease; and a person who purports to exercise any power of a general partner at a time when, pursuant to this subsection, those powers have ceased shall be guilty of an offence.

(5) Upon the dissolution of a limited partnership the partnership shall cease to carry on business except to the extent necessary for its beneficial winding up; and where in relation to a partnership there is a contravention of this subsection, the partnership and each general partner thereof shall be guilty of an offence.

(6) All expenses properly incurred in the dissolution of a limited partnership, including the liquidator's remuneration, are payable from the partnership's assets in priority to all other debts.

(7) Upon the dissolution of a limited partnership, notwithstanding the fact that (pursuant to subsection (8)(c) below) the certificate of registration has ceased to be valid, the persons winding up the partnership's affairs, in the name of

and for and on behalf of the partnership –

- (a) may, to the extent necessary for the beneficial winding up of the partnership, prosecute, defend or settle any civil or criminal action,
- (b) shall dispose of the partnership's property and realise its assets, and
- (c) shall, in accordance with the provisions of section 32 –
  - (i) discharge the partnership's debts, and
  - (ii) distribute to the partners any remaining assets of the partnership,

the whole without prejudice to the personal liability of the partners.

- (8) Upon the dissolution of a limited partnership –
  - (a) notice of the fact shall, within a period of seven days beginning on the date of dissolution, be filed with the Greffier and published in La Gazette Officielle,
  - (b) the Greffier shall, as soon as is reasonably practicable, delete the inscription relating to the partnership from the Register, and
  - (c) the partnership's certificate of registration shall cease to be valid.

(9) Where there is a contravention of any provision of subsection (8)(a) in relation to a limited partnership, the general partners thereof –

- (a) shall each be guilty of an offence, and
- (b) shall each continue to incur liability as if they were the general partners of a limited partnership which had not been dissolved.

(10) The dissolution of a limited partnership shall be deemed to take place upon the earlier of the following –

- (a) the date of the occurrence of the event upon which, under the provisions of this Law, the partnership is dissolved, or
- (b) the date of the order of the Royal Court under section 29(1) for its dissolution.

(11) As soon as a limited partnership's affairs are fully wound up, the persons who conducted the winding up shall –

- (a) prepare an account of the winding up, giving details of the conduct thereof and the disposal of the partnership's property, and stating whether or not any state of affairs described in section 31 has come to their attention, and
- (b) provide all partners with a copy of the said account.

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

**Personal liability for certain defaults in event of insolvency.**

- 31.** (1) In any case where –
- (a) a limited partnership has been dissolved and is unable to pay its debts, and
  - (b) there has been in relation to the partnership a contravention of any relevant provision which –
    - (i) has contributed to the inability of the partnership to pay its debts,
    - (ii) has materially misled or deceived any partner or creditor as to, or has resulted in substantial uncertainty as to, the assets, liabilities, client money or investment instruments of the partnership, or
    - (iii) has substantially impeded the orderly winding up of the partnership's affairs,

the Royal Court may, on the application of any creditor or partner or of any person conducting the winding up of the partnership, declare that any officer or former officer of any general partner in the partnership who is responsible for the

contravention shall be personally liable, without limitation of liability, for the debts of the partnership or such part thereof as may be specified by the Court.

(2) Where the Royal Court makes a declaration under subsection (1) in relation to any person, it may –

(a) give such directions as it thinks fit for the purpose of giving effect to the declaration, and

(b) direct that the liability of that person under the declaration shall be a charge on –

(i) any debt due from the partnership to him, to any person on his behalf, to any person claiming as assignee from or through him or to any person acting on behalf of such an assignee, or

(ii) any charge on any partnership assets or any interest in any such charge held by or vested in him or any such person,

and the Court may also from time to time make such further orders as it thinks fit for the purpose of giving effect to any charge imposed under this subsection.

(3) In subsection (2) the expression "**assignee**" includes any person to whom or in whose favour, by the directions of the person liable, the debt, charge or interest was created, issued or transferred but does not include an assignee for valuable consideration (other than consideration by way of marriage) given in good faith and without notice of any of the grounds upon which the

declaration might have been made.

(4) The Royal Court shall not make a declaration under subsection (1) in respect of a person if it considers that –

- (a) he took all reasonable steps to secure compliance by the limited partnership with the relevant provisions, or
- (b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of or appointed by the general partners –
  - (i) was charged with the duty of ensuring that those provisions were complied with, and
  - (ii) was in a position to discharge that duty.

(5) The foregoing provisions of this section are without prejudice to any other penalty, remedy or proceedings, whether civil or criminal, in respect of the contravention.

(6) In any case where –

- (a) a limited partnership has been dissolved and is unable to pay its debts, and
- (b) there has been in relation to the partnership a contravention of any relevant provision which –

*Consolidated text*

- (i) has contributed to the inability of the partnership to pay its debts,
- (ii) has materially misled or deceived any partner or creditor as to, or has resulted in substantial uncertainty as to, the assets, liabilities, client money or investment instruments of the partnership, or
- (iii) has substantially impeded the orderly winding up of the partnership's affairs,

any officer or former officer of any general partner in the firm who is responsible for the contravention shall (without prejudice to any civil liability) be guilty of an offence.

(7) In a prosecution for an offence under this section, it shall be a defence for the person charged to show that –

- (a) he took all reasonable steps to secure compliance by the limited partnership with the relevant provisions, or
- (b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of or appointed by the general partners –
  - (i) was charged with the duty of ensuring that those provisions were complied with, and

- (ii) was in a position to discharge that duty.
- (8) For the purposes of this section –
- (a) the expression "**officer**", in relation to a general partner, means any director, manager, member of any committee of management or other controlling authority, secretary or other similar officer of the general partner, any person purporting to act in any such capacity or any person in accordance with whose directions or instructions any of the aforesaid are accustomed to act,
  - (b) the expression "**relevant provision**" means any provision of section 15, [16(2)] or 18(1) or (3) and any other provision for the time being prescribed by regulations of the Committee, and
  - (c) a person shall be considered to be responsible for a contravention of a relevant provision if the contravention –
    - (i) was committed with his consent or connivance,  
or
    - (ii) was attributable to or facilitated by any neglect on his part.

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**NOTE**



*In section 31, the figures and symbols in square brackets in paragraph (b) of subsection (8) were substituted by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 3(3), with effect from 2nd July, 2007.*

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**Distribution of assets upon dissolution.**

**32.** Upon the dissolution of a limited partnership, the assets shall be distributed in the following order –

- (a) firstly, to creditors other than partners, to the extent otherwise permitted by law, in satisfaction of partnership debts,
- (b) secondly, to limited partners who are creditors and who are not also general partners, to the extent otherwise permitted by law, in satisfaction of partnership debts other than debts described in paragraph (c),
- (c) finally, subject to the provisions of the partnership agreement, to partners as follows –
  - (i) firstly, to limited partners for the return of their contributions or, where appropriate, for the release of their obligations to make contributions,
  - (ii) secondly, to limited partners for their share of the profits on their contributions,
  - (iii) thirdly, to general partners other than for

capital and profits,

- (iv) fourthly, to general partners in respect of capital,
- (v) finally, to general partners in respect of profits.

## PART V

### MISCELLANEOUS PROVISIONS

#### **Application of general partnership law.**

33. The rules of law applicable to partnerships shall apply to limited partnerships unless inconsistent with the provisions of this Law.

#### **Criminal and civil liability for false statements.**

34. Any person who in connection with an application for the grant, renewal or variation of the Committee's consent for the registration of a limited partnership under section 7A of the Control of Borrowing Ordinance, or otherwise in connection with the registration of a limited partnership under this Law, or in submitting any declaration or other document or information to the Committee, Commission or Greffier or to any auditor under or for the purposes of any provision of this Law, any regulation made under it or the said Ordinance, or in compliance or purported compliance with any requirement imposed by or under any such provision, or otherwise for the purposes of any such provision –

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

otherwise, which is false, deceptive or misleading in a material particular,

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

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

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

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

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**NOTE**

*Section 7A of the Control of Borrowing Ordinance has since been repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 33(b), with effect from 29th October, 2008.*

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**Exclusion of liability for certain public officers.**

**35.** No liability shall be incurred by the States, the Committee or the Commission, or by any member, officer or servant thereof, or by the Greffier or any other officer of the Greffe, in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under this Law, any regulation made under it or the Control of Borrowing Ordinance, unless the thing is done or omitted to be done in bad faith.

**Fees.**

**36.** (1) On the occurrence in relation to a limited partnership of any event specified below, the limited partnership shall pay the following fees –

- (a) on the filing of –
  - (i) a declaration under section 8(2)(d), [£150],
  - (ii) notice of change of particulars or of general partners under section 10(1), £25,
  - (iii) notice of continuance of partnership under

section 28(1)(b), £25,

- (iv) notice of dissolution under section 30(8)(a),  
£25,

in each case payable to the Greffier,

- (b) on the issue of a new certificate of registration under section 10(1), £25 (payable to the Greffier),
- (c) upon or in relation to any such event, circumstance or matter as may be prescribed, such fee payable to such person as may be prescribed in relation thereto.

(2) A fee specified in subsection (1) shall be recoverable from the limited partnership or from any general partner thereof as a civil debt.

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**NOTES**

*In section 36, the figures and symbol in square brackets in sub-paragraph (i) of paragraph (a) of subsection (1) were substituted by the Limited Partnerships (Fees and Annual Return) Regulations, 2008, regulation 4, with effect from 1st January, 2009.*

*The following Regulations have been made under section 36:*

*Limited Partnerships (Fees and Annual Return) Regulations, 2008.*

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**Restrictions on use of certain descriptions and names.**

37. (1) No person carrying on any business in the Bailiwick, other than a limited partnership within the meaning of this Law or a partner therein, shall –

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

that he is, or is carrying on business as, a limited partnership or (as the case may be) a partner therein.

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

**Contravention of conditions of Committee's consent.**

**38.** A person who contravenes or who causes or permits the contravention of any condition subject to which the Committee's consent for the registration or continued registration of a limited partnership was granted under section 7A of the Control of Borrowing Ordinance shall be guilty of an offence.

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**NOTE**

*Section 7A of the Control of Borrowing Ordinance has since been repealed by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007, section 33(b), with effect from 29th October, 2008.*

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**Offences by bodies corporate, etc.**

**39.** (1) Where an offence under this Law is committed by a body corporate or by an unincorporated body and is proved to have been committed with

the consent or connivance of, or to be attributable to or to have been facilitated by any neglect on the part of, any director, manager, member of any committee of management or other controlling authority, secretary or other similar officer or partner of the body, or any person purporting to act in any such capacity, he as well as the body is guilty of the offence and may be proceeded against and punished accordingly.

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

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

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

**Penalties.**

**40.** (1) A person guilty of an offence under section 5(5)(a), [...] 24(5) or 34 shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months, to a fine not exceeding level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine, or to both.

(2) A person guilty of an offence under section 6(6), 10(2)(a), 15(10), 18(4), 30(4), 30(5), 30(9)(a), 31(6), 37(2) or 38 shall be liable –

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

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

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**NOTE**

*In section 40, the figures, symbols and punctuation omitted in square brackets in subsection (1) were repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 1(2)(a), with effect from 1st July, 2008.*

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**Interpretation.**

**41.** (1) In this Law, unless the context otherwise requires –

"**accounting records**" shall be construed in accordance with section 15(1)(d),

"**auditors' report**" has the meaning given by section 18(1),

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

(a) that he has been declared by the Royal Court to be insolvent or that a Commissioner or Committee of Creditors has been appointed by the Royal Court to supervise or secure his estate,



*Consolidated text*

- (b) that his affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner,
- (c) that a preliminary vesting order has been made against him in respect of any of his real property in the Bailiwick,
- (d) in the case of a registered company, that –
  - (i) a liquidator (provisional or otherwise) has been appointed to act, or
  - (ii) the company has passed a special resolution requiring the company to be wound up voluntarily,  
  
otherwise than for the sole purpose of solvent amalgamation or solvent reconstruction, or
- (e) that a composition or arrangement with creditors has been entered into in respect of him whereby his creditors will receive less than 100p in the pound or that possession or control has been taken of any of his property or affairs by or on behalf of creditors,

and cognate expressions shall be construed accordingly,

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

"**business**" includes every trade, occupation or profession,

"**certificate of registration**" means the certificate issued by the Greffier under section 9(1) or 10(1),

"**the Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>b</sup>,

"**the Committee**" means the States [Commerce and Employment Department] or such other Committee or body as the States may by Ordinance appoint for the purposes of this Law,

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

"**contribution**", in relation to a limited partner, means the money or property which, upon entering the limited partnership, he contributes or agrees to contribute to the capital of the partnership,

"**the Control of Borrowing Ordinance**" means the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959<sup>c</sup>,

"**debts**" includes obligations and liabilities,

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<sup>b</sup> Ordres en Conseil Vol. XXX, p. 243.

<sup>c</sup> Recueil d'Ordonnances Tome XII, p. 105; Tome XV, p. 197; Tome XVI, p. 473; Tome XX, p. 412; No. XXVIII of 1989; and section 45 of this Law.

**"financial year"**, in relation to a limited partnership, means –

- (a) a period of up to 18 months beginning on the date on which the partnership is registered, and thereafter
- (b) each period of 12 months (or such other period as the Commission may by notice in writing allow in any particular case),

at the end of which the balance of the accounts of the partnership is struck,]

**"general partner"** has the meaning given by section 2(1)(a),

**"the Greffier"** means Her Majesty's Greffier,

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

**"insolvent"** and cognate expressions shall be construed in accordance with section 21(6),

**"limited partner"** has the meaning given by section 2(1)(b),

**"limited partnership"** means a partnership which is for the time being registered as a limited partnership in accordance with section 8 and in respect of which there is a valid certificate of registration,

**"partner"** means a limited or general partner,

**"partnership agreement"** has the meaning given in section 3,

**"partnership interest"** means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets,

**"prescribed"** means prescribed by regulations of the Committee,

**"qualified"** and **"disqualified"**, in relation to an auditor, shall be construed in accordance with section 17[...],

**"Register"** means the Register of Limited Partnerships established and maintained under section 7,

**"register of limited partners"** has the meaning given by section 15(1)(b),

**"registration"** means the registration of a limited partnership by inscription in the Register in accordance with the provisions of section 8, and cognate expressions shall be construed accordingly,

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

**"solvent"** and cognate expressions shall be construed in accordance with section 21(6).

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

(3) In relation to a limited partnership with two or more general partners, any provision of this Law requiring or authorising any thing to be done by

or in relation to the general partners shall be satisfied, except where the context requires otherwise, by that thing being done by or in relation to any one general partner.

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**NOTES**

*In section 41,*

*the words in square brackets in the definition of the expression "the Committee" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(c), Schedule 2, paragraph 1(c), with effect from 6th May, 2004;*

*the definition of the expression "financial year" in subsection (1) was substituted by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 6, with effect from 2nd July, 2007;*

*the figure and symbols omitted in square brackets in the definition of the expression "qualified" and "disqualified" in subsection (1) were repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 1(2)(b), with effect from 1st July, 2008.*

*The functions, rights and liabilities of the Advisory and Finance Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Commerce and Employment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(c), Schedule 2, paragraph 1(c), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*

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**Service of documents on limited partnerships and general partners.**

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

(a) a limited partnership, may be given or served –

(i) by being left at, or sent by post to, the

*Consolidated text*

partnership's registered office, or

- (ii) by being delivered to any general partner thereof, or by being left at, or sent by post to, his address shown in the Register,
- (b) a general partner, may be given or served –
- (i) by being left at, or sent by post to, the partnership's registered office, or
  - (ii) by being delivered to him, or by being left at, or sent by post to, his address shown in the Register,

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

(2) Notice to a general partner of any matter relating to the business or affairs of the limited partnership shall (without prejudice to the provisions of section 41(3)) be deemed to be notice to the partnership.

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

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere by airmail,

on the seventh day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>d</sup>.

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

**Power to make regulations.**

**43.** The Committee may, after consultation with the Commission, by regulation make such provision for the implementation of this Law and otherwise in respect of limited partnerships as it thinks fit including (without prejudice to the generality of the foregoing) provision as to any of the following matters –

- (a) the duties of the Greffier under this Law,
- (b) the forms to be used for the purposes of this Law,
- (c) generally, the conduct and regulation of the registration of limited partnerships under this Law and the Control of Borrowing Ordinance and any matters incidental thereto, including the form of the Register,
- (d) any matter to be prescribed under this Law,
- (e) ...

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<sup>d</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

*Consolidated text*

- (f) the amendment of any provisions of sections 16, 17, 18 and 19 –
  - (i) ...
  - (ii) so as to exclude the application of any requirement of those provisions in relation to limited partnerships of such classes or descriptions, in such circumstances and subject to such conditions as may be specified in the regulations,
  
- (g) the amendment of any provision of –
  - (i) section 8 (matters to be filed with Greffier in connection with registration of limited partnerships),
  - (ii) section 15 (records),
  - (iii) section 18 (auditors' reports), whether in relation to the matters to be stated in such reports or otherwise, and
  - (iv) section 19 (auditors' powers and duties), whether in relation to the matters to be stated in auditors' reports, the reporting of matters to the Committee or Commission or the supplying of information to them, or otherwise,



*Consolidated text*

- (h) the variation of any fee specified in section 36(1),
- (i) the fees to be paid to the Committee, Commission or Greffier for anything done by or in relation to them under or for the purposes of this Law or the Control of Borrowing Ordinance, so far as the latter relates to limited partnerships,
- (j) without prejudice to the generality of paragraph (i), the fees to be payable by any person for –
  - (i) an inspection by him of the Register,
  - (ii) a copy or extract, or a certified copy or extract, of an entry in the Register or any certificate.

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**NOTES**

*In section 43,*

*paragraph (e) was repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 1(2)(c), with effect from 1st July, 2008;*

*subparagraph (i) of paragraph (f) was repealed by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 4(2), with effect from 2nd July, 2007.*

*The following Regulations have been made under section 43:*

*Limited Partnerships (Fees and Annual Return) Regulations, 2008.*

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**General provisions as to regulations.**

44. (1) Any regulations under this Law may –
- (a) empower the Committee or the Commission, in prescribed circumstances, to issue licences or permissions and give directions,
  - [(aa) provide that the provisions of this Law shall apply in relation to any class or description of limited partnership specified by the regulations subject to such exceptions, adaptations and modifications as may be so specified,]
  - (b) make provision for their enforcement, including provision as to the creation, trial (summarily or on indictment) and punishment of offences,
  - (c) contain incidental, supplemental, transitional and consequential provision,
  - (d) be varied or repealed by subsequent regulations under this Law, and
  - (e) make consequential amendments to this Law and other enactments so far as they relate to limited partnerships.
- (2) Any power conferred by this Law to make regulations may be exercised –
- (a) in relation to all cases to which the power extends, or

*Consolidated text*

in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

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

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

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

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

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

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

done under it or to the making of new regulations.

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**NOTE**

*In section 44, paragraph (aa) of subsection (1) was inserted by the Limited Partnerships (Guernsey) (Amendment) Law, 1997, section 1(3), with effect from 1st May, 2001.*

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**Amendments.**

**45.** (1) In the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959<sup>e</sup> –

(a) after section 7 insert the following section –

**"Limited Partnerships.**

**7A.** (1) A limited partnership shall not be registered and shall not continue to be registered under the provisions of section 8 of the Limited Partnerships (Guernsey) Law, 1995 except under the authority of and in accordance with the conditions of the written consent in that behalf of the Committee.

(2) The provisions of section 7 of this Ordinance (other than the proviso to subsection (1) thereof) shall apply in relation to a limited partnership as they apply in relation to a unit trust scheme; and consequently any reference in that section to a unit trust scheme or to a unit under a unit trust

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<sup>e</sup> Recueil d'Ordonnances Tome XII, p. 105; Tome XV, p. 197; Tome XVI, p. 473; Tome XX, p. 412; and No. XXVIII of 1989.

scheme shall (except in the said proviso) be deemed to include a reference to a limited partnership or (as the case may be) to a partnership interest or share in a limited partnership.

(3) The exemptions conferred by the provisions of Part II of this Ordinance shall not apply in relation to a limited partnership.",<sup>2</sup>

(b) in section 12, after subsection (1), insert the following subsection –

" (1A) Any conditions subject to which any such consent as is mentioned in subsection (1) was granted may be amended, and further conditions in respect of any such consent may be imposed, from time to time by the Committee."

(2) In the Borrowing (Control) (Bailiwick of Guernsey) Law, 1946<sup>f</sup>, after paragraph (d) of section 1(1) insert the following paragraph –

"(e) the registration and business of limited partnerships".

(3) In Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>g</sup> –

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<sup>f</sup> Ordres en Conseil Vol. XIII, p. 43; there are amendments not relevant to this enactment.

<sup>g</sup> Ordres en Conseil Vol. XXX, p. 281; Schedule 1 was amended by Recueil d'Ordonnances Tome XXIV, p. 324.

- (a) in paragraph 1(3)(kk) after "unit trust" insert "or a closed-ended limited partnership",<sup>3</sup>
- (b) in paragraph 1(4) delete the definition of "closed-ended unit trust" and insert the following definition –

"**closed-ended unit trust**" means any unit trust, and "closed-ended limited partnership" means any limited partnership, which in either case would not be an open-ended investment company if it were a body corporate,"<sup>4</sup>

(4) ...

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**NOTES**

*In section 45, subsection (4) was repealed by the Income Tax (Limited Partnership Amendments) (Guernsey) Law, 1996, section 2, with effect from 1st February, 1996.*

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**Power of Committee to delegate functions.**

**46.** (1) For the removal of doubt, and without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>i</sup>, it is hereby provided that the Committee may arrange for any of the functions conferred on it by or under this Law or the Control of Borrowing Ordinance to be performed by the Commission; and –

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<sup>i</sup> Order in Council No. XXI of 1991.

- (a) a function performed by the Commission pursuant to such an arrangement shall for all purposes be deemed to have been performed by the Committee,
- (b) a decision taken or other thing done by the Commission pursuant to such an arrangement shall have the same effect as if taken or done at a quorate meeting of the Committee.

(2) Subsection (1) does not apply in relation to the Committee's powers to make regulations.

**Repeals.**

47. The Law entitled "Loi relative aux Sociétés en Commandite" of 1856<sup>j</sup> and the "Sociétés en Commandite" (Abolition) (Bailiwick of Guernsey) Law, 1978<sup>k</sup> are hereby repealed.

**Citation.**

48. This Law may be cited as the Limited Partnerships (Guernsey) Law, 1995.

**Commencement.**

49. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions and different purposes.

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<sup>j</sup> Ordres en Conseil Vol. I, p. 262.

<sup>k</sup> Ordres en Conseil Vol. XXVI, p. 541.

**NOTE**

*The Law, save for section 45(4), was brought into force on 1st February, 1996 by the Limited Partnerships (Guernsey) Law, 1995 (Commencement) Ordinance, 1996, section 1.*

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<sup>1</sup> Prior to its substitution, section 17 was amended by the Limited Partnerships (Guernsey) (Amendment) Law, 2006, section 4(1), with effect from 2nd July, 2007.

<sup>2</sup> For subsequent amendments, see the consolidated text of the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959.

<sup>3</sup> For subsequent amendments, see the consolidated text of the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

<sup>4</sup> For subsequent amendments, see the consolidated text of the Protection of Investors (Bailiwick of Guernsey) Law, 1987.