

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR THE FORMATION AND
REGISTRATION OF LIMITED LIABILITY COMPANIES; AND TO
PROVIDE FOR INCIDENTAL AND CONNECTED PURPOSES**

THE LIMITED LIABILITY COMPANIES BILL, 2015

MEMORANDUM OF OBJECTS AND REASONS

This Bill makes provision for the formation and registration of limited liability companies. The Bill contains 11 parts and 69 clauses.

Clause 1 provides for the short title of the Bill and commencement provision.

Clause 2 makes provision for the interpretation section and outlines the definitions of the terms and expressions used throughout the Bill.

Clause 3 provides for the saving of the rules of equity and common law applicable to companies as modified by the Companies Law insofar as it is not inconsistent with the provisions of the Bill in relation to limited liability companies or the nature of a limited liability companies.

Clause 4 makes provision for the appointment of the Registrar of Companies as the Registrar of Limited Liability Companies and further for the maintenance of a Register of Limited Liability Companies.

Clause 5 outlines the requirements for the formation of a limited liability company and the registration thereof. It specifies the filing of a registration statement which details certain particulars of the limited liability company.

Clause 6 provides for the conventions which govern the naming of a limited liability company.

Clause 7 provides for the maintenance of a registered office in the Islands and makes it an offence for a limited liability company to carry on business in the Islands without a registered office.

Clause 8 makes provisions for amendment to the registration statement where there are any changes in the particulars of the limited liability company.

Clause 9 specifies the capacity of a limited liability company to operate within the Islands and provides that a limited liability company shall not carry on business with the public in the Islands except in specific circumstances and shall have separate legal personality.

Clause 10 makes provision for the admission of members to a limited liability company and makes provision for the treatment of LLC interests.

Clause 11 provides for the transfer of an LLC interest subject to the prohibition against the issue of bearer LLC interests, certificates or coupons pursuant to section 10(11). It also provides for the assignment of an LLC interest and the rights attached upon an assignment.

Clause 12 makes provisions for an assignee to have the right of become a member of the limited liability company.

Clause 13 provides for the cessation of membership and the treatment of a member on death or bankruptcy.

Clause 14 makes provision for the redemption and repurchase of an LLC interest by a limited liability company subject to that limited liability company's ability to pay its debt immediately after any such acquisition.

Clause 15 provides for the withdrawal of a member.

Clause 16 outlines the requirement for an LLC agreement and details the terms and conditions which govern that agreement.

Clause 17 makes provision for the remedies for a breach of an LLC agreement.

Clause 18 provides that no act of a limited liability company shall be invalid by reason only of the fact that the limited liability company lacked the capacity or power to perform that act.

Clause 19 makes provisions for the creation of classes of LLC interests or groups of members and the rights attributable to a class or group under the LLC agreement. It also makes provision for the rules in relation to voting.

Clause 20 deals with liability of a limited liability company to third parties and provides that any liability is that of the limited liability company and not its members.

Clause 21 provides for the contribution to the assets of a limited liability company by its members.

Clause 22 makes provision for the allocation of profits and losses among members, classes of LLC interests or groups of members as provided for in the LLC agreement.

Clause 23 makes similar provision for the allocation of distributions among members, classes of LLC interests or groups of members.

Clause 24 provides for distributions in cash or kind pursuant to the LLC agreement.

Clause 25 makes provision for limitations on distribution.

Clause 26 provides for the vesting of management powers in members or alternatively in managers as provided for in the LLC agreement.

Clause 27 makes provision for the naming or designation of a manager and outlines the rights, powers and responsibilities of a manager.

Clause 28 provides for classes of managers and the voting rights of such classes of managers.

Clause 29 specifies the remedies for breach of an LLC agreement by a manager.

Clause 30 provides for the delegation of the rights and powers of a member or manager.

Clause 31 makes provision for the protection of a manager where the manager in good faith relies on reports and information provided to the limited liability company.

Clause 32 provides for the resignation of a manager.

Clause 33 makes provision for members and managers to access the information and records of the limited liability company.

Clause 34 permits business transactions between members and managers with the limited liability company.

Clause 35 makes provision for a winding up of a limited liability company either by the Court or voluntarily by the limited liability company.

Clause 36 outlines the process for a voluntary winding up and provides for the application of Part V of the Companies Law and the Companies Winding Up Rules *mutatis mutandis* to the winding up and dissolution of a limited liability company.

Clause 37 outlines the process for winding up by the Court and provides for the application of Part V of the Companies Law and the Companies Winding Up

Rules *mutatis mutandis* to the winding up and dissolution of a limited liability company.

Clause 38 provides for the distribution of assets on a winding up.

Clause 39 makes provision for the Court to dismiss a winding up petition presented by a person, including a member, who is contractually bound not to present a winding up petition against a limited liability company.

Clause 40 provides for the removal of a defunct limited liability company and the application of Part VI of the Companies Law *mutatis mutandis* to a limited liability company.

Clause 41 makes provision for the treatment of the property of a defunct limited liability company and vesting of that property in the Financial Secretary.

Clause 42 provides for the power to compromise with creditors and members.

Clause 43 makes provision for facilitating reconstruction and amalgamation of limited liability companies.

Clause 44 provides for the power to acquire LLC interests of dissenting members.

Clause 45 provides for definitions of terms used in Part 10 of the Bill.

Clause 46 makes provision for the merger and consolidation of two or more limited liability companies. Provision is made for the application and registration process on a merger or consolidation. The clause further provides that it is an offence for a manager to make a false declaration in relation to the declarations required to be filed with the application.

Clause 47 provides for the delay of the effective date of a merger or consolidation provided that the delayed effective date can be no later than ninety days after the registration of the merger or consolidation.

Clause 48 makes provision for the termination or amendment of a plan of merger or consolidation before it is effective.

Clause 49 provides for the effect of the merger or consolidation in relation to the consolidated entity.

Clause 50 makes provision for the merger or consolidation of a limited liability company with an exempted company.

Clause 51 makes provision for the merger or consolidation of a limited liability company with a foreign company.

Clause 52 provides for the rights of dissenters in the event of a merger or consolidation.

Clause 53 specifies certain limitations on the rights of dissenters in the event of a merger or consolidation.

Clause 54 makes provision for the continuation of a foreign entity where it is registered as a limited liability company.

Clause 55 provides for the deregistration of a limited liability company registered in the Islands upon an application to be registered as a foreign entity in another jurisdiction.

Clause 56 makes provision for the conversion of an exempted company to a limited liability company.

Clause 57 provides for a limited liability company to submit annual returns by January 31st in each year and provides for the penalty where a limited liability company defaults on the submission.

Clause 58 makes provision for Cabinet to give an undertaking that no law shall impose a tax on a limited liability company.

Clause 59 provides for filings by electronic means of any document required to be filed with the Registrar.

Clause 60 makes provision for the applicability of other Cayman Islands laws to a limited liability company.

Clause 61 provides for a limited liability company to maintain a register of its members and a default in the maintenance of that register incurs a penalty.

Clause 62 provides for a limited liability company to maintain a register of its managers.

Clause 63 makes provision for the mandatory keeping of proper accounts and records by a limited liability company.

Clause 64 provides for a distinction between a party to a limited liability company LLC agreement and a member.

Clause 65 makes provision that, where the Registrar is satisfied that a default is not wilful, the Registrar may cap the penalty in an instance where that penalty is calculated on a *per diem* basis.

Clause 66 provides for the making of a contract by a limited liability company.

Clause 67 prohibits a limited liability company from the sale of securities in the Islands.

Clause 68 provides that a limited liability company may carry on electronic business.

Clause 69 makes provision for Cabinet to make regulations to prescribe all matters to be prescribed and give effect to the purposes of the Law.

THE LIMITED LIABILITY COMPANIES BILL, 2015

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CAYMAN ISLANDS

**A BILL FOR A LAW TO PROVIDE FOR THE FORMATION AND
REGISTRATION OF LIMITED LIABILITY COMPANIES; AND TO
PROVIDE FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Limited Liability Companies Law, 2015. Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. In this Law - Interpretation

“authorized person” means any person with authority to act on behalf of and bind any person or foreign entity;

“Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (2013 Revision), and includes a person acting under the Authority’s authorization;

“certificate of registration” means the certificate of registration of a limited liability company issued by the Registrar pursuant to section 5(4) of this Law;

“Companies Law” means the Companies Law (2013 Revision);

“Companies Winding Up Rules” means the Companies Winding Up Rules 2008;

“contribution” means any cash, property, other assets, services rendered or other obligation to contribute cash, property or other assets or to perform services, which a person contributes to a limited liability company in the person’s capacity as a member, but does not include any moneys lent or agreed to be lent to a limited liability company;

“Court” means the Grand Court of the Cayman Islands;

“dual foreign name” means an additional name in any language not utilising the Roman alphabet, utilising any letters, characters, script, accents and other diacritical marks, and which does not have to be a translation or transliteration of the name in the Roman alphabet;

“electronic transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be reproduced in paper form by such a recipient through an automated process;

“exempted company” bears the meaning ascribed to that expression under the Companies Law;

“exempted limited partnership” bears the meaning ascribed to that expression under the Exempted Limited Partnership Law;

“Exempted Limited Partnership Law” means the Exempted Limited Partnership Law, 2014;

“foreign entity” means a foreign company or a body corporate or corporation of any kind with legal personality, statutory trust, common law trust, any unincorporated business (including a partnership, whether general or limited and whether or not with legal personality) formed, incorporated, created or that otherwise came into being under the laws of any foreign jurisdiction;

“limited liability company” means a limited liability company registered under this Law;

“LLC agreement” means an agreement, in writing (whether referred to as an LLC agreement, operating agreement or otherwise) or other instrument (including a

registration statement) of the member or members as to the business or affairs of a limited liability company and any amendments or additions thereto;

“LLC interest” means the interest of a member in a limited liability company; including a member’s share of the profits and losses of that limited liability company, a member’s right to receive distributions of the limited liability company’s assets and a member’s voting or other rights, benefits and obligations to which the member is entitled or subject pursuant to the LLC agreement or this Law;

“manager” means, with respect to a limited liability company, the person or persons in whom the management of that limited liability company is vested pursuant to section 26(1) or 27(1) of this Law;

“member” means a person who is a member of a limited liability company in accordance with section 10 (and in such capacity);

“personal representative” means, with respect to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, with respect to a person other than a natural person, the legal representative or successor thereof;

“permitted electronic means” means such electronic means, if any, and related procedures as the Registrar may permit from time to time to be used to file and deliver any particular documents pursuant to this Law;

“public in the Islands” excludes any limited liability company, any exempted limited partnership, any exempted or ordinary non-resident company registered under the Companies Law, an entity registered pursuant to Part IX of the Companies Law, a foreign limited partnership registered pursuant to the Exempted Limited Partnership Law, any person acting as general partner of an exempted limited partnership registered under the Exempted Limited Partnership Law or any director or officer of the same acting in such capacity or the trustee of any trust registered or capable of registration under section 74 of the Trusts Law (2011 Revision) acting in such capacity and shall also exclude such other persons as may be excluded from the definition of “public in the Islands” as such term may be defined in any other Law in force in the Islands;

“Register” means the Register of Limited Liability Companies maintained by the Registrar pursuant to section 4(2) of this Law;

“Registrar” means the Registrar of Limited Liability Companies appointed under section 4(1);

“registration statement” means the registration statement referred to in section 5(2), and that statement as amended pursuant to this Law;

“regulatory laws” bears the meaning ascribed to that expression under the Companies Law;

“special economic zone business” means business authorized to be carried on in a special economic zone pursuant to any Law in force in the Islands; and

“translated name” means a translation or transliteration of a limited liability company’s dual foreign name into the English language provided by either a person licensed to provide that limited liability company’s registered office in the Cayman Islands or a certified translator (together with a statement in the prescribed form as to the foreign language in which such dual foreign name is written).

Saving of rules of equity

3. The rules of equity and of common law applicable to companies registered in the Islands, as modified by the Companies Law and any other Laws in force in the Islands applicable to such companies, shall apply to a limited liability company, except in so far as such rules and law or modifications thereto are inconsistent with the express provisions of this Law or the nature of a limited liability company such as -

- (i) not being a company limited by shares or by guarantee but with the liability of its members limited pursuant to the provisions of this Law;
- (ii) having certain characteristics of, and the flexibility to allocate profits and losses to its members in a manner akin to partners in, an exempted limited partnership; and
- (iii) being managed by its members or by one or more managers that are not members, as provided in this Law.

Registrar and Register of limited liability companies

4. (1) The Registrar of Companies appointed under the Companies Law shall be the Registrar of Limited Liability Companies.

(2) The Registrar shall maintain a Register of Limited Liability Companies recording the name of each limited liability company registered under this Law, the date of the registration, any change of name of a limited liability company and the date of the change, the date of deregistration or striking off of a limited liability company and recording any other information in respect of a limited liability company as the Registrar may determine to be necessary or appropriate in the conduct of the Registrar’s duties pursuant to this Law or otherwise and a limited liability company’s dual foreign name shall only be entered on the Register if its translated name conforms with the provisions of

section 6 and if it does not so conform then that dual foreign name and that translated name shall not be entered on the Register.

(3) The Registrar shall also maintain a record of all registration statements or other documents filed with the Registrar pursuant to the requirements of this Law.

PART 2 FORMATION AND REGISTRATION

5. (1) Any one or more persons may form a limited liability company for any lawful business, purpose or activity, whether or not for profit, provided that, subject to section 36, a limited liability company shall at all times have at least one member. Formation

(2) The registration of a limited liability company shall be effected by payment to the Registrar of a registration fee in the amount that the Cabinet shall, from time to time, by regulation prescribe and by filing with the Registrar a registration statement signed by or on behalf of any person forming the limited liability company in accordance with section 5(1), which registration statement shall contain -

- (a) the name of the limited liability company and, if applicable, its dual foreign name together with its translated name;
- (b) the address in the Islands of the registered office of the limited liability company;
- (c) if the limited liability company has not been formed for an unlimited duration, the term, if any, for which a limited liability company is formed; and
- (d) a declaration that the limited liability company shall not undertake business with the public in the Islands other than so far as may be necessary for the carrying on of the business of that limited liability company outside the Islands as contemplated by this Law.

(3) The signed registration statement (or a copy thereof) shall be delivered, if not delivered by permitted electronic means, in duplicate to the Registrar who shall file and retain a copy or, if delivered by permitted electronic means, only a copy of the signed registration statement need be delivered and the Registrar shall file and retain that copy in such manner as the Registrar may determine appropriate and shall return a duplicate thereof marked to evidence receipt.

(4) Upon the filing of the registration statement (or a copy thereof) in accordance with subsection (3), a limited liability company shall be deemed to be

registered on the date of filing, and the Registrar shall issue a certificate of registration under the Registrar's hand and seal of office that the limited liability company is registered with effect from the date of the filing of the registration statement.

(5) A certificate of registration of a limited liability company issued under this Law shall be conclusive evidence of compliance with all the requirements of this Law in respect of formation and registration.

(6) An LLC agreement may be entered into at any time before, after or at the time of the filing of a registration statement and, if entered into before such filing, shall be deemed effective on the date of registration of the limited liability company.

Name convention

6. (1) Subject to subsection (2), every limited liability company shall have a name which -

- (a) may, but need not, contain as a suffix the words "Limited Liability Company" or the abbreviation "L.L.C." or "LLC";
- (b) in the case of a limited liability company carrying on special economic zone business, shall include the words "special economic zone" or the letters "SEZ"; and
- (c) may be preceded by or followed with a dual foreign name.

(2) A limited liability company shall not be registered by or have a name which -

- (a) is identical with that by which a limited liability company in existence and registered under this Law or an exempted company is already so registered (except where the limited liability company or exempted company in existence is in the course of being dissolved and has signified its consent in such manner as the Registrar requires) or, in the opinion of the Registrar, so nearly resembles that name as to be likely to mislead;
- (b) without the consent of the Registrar, contains any word or words (other than with respect to subsection (5)) that a company incorporated under the Companies Law would not be permitted to use in its name (either with or without the consent of the Registrar of Companies); or
- (c) in the opinion of the Registrar, suggests that the limited liability company is licensed whether in the Islands or elsewhere to carry on any type or class of business subject to the regulatory laws of the Islands when it is not so licensed or, because of any other reason, is likely to mislead.

- (3) A person may apply to reserve a specified name by -
- (a) filing with the Registrar (including by permitted electronic means) an application executed by the applicant specifying the name to be reserved and the name and address of the applicant; and
 - (b) paying the prescribed application fee,

and if the Registrar finds that the name is available for use by a limited liability company, the Registrar may reserve the name for the exclusive use of the applicant for a period of up to one hundred and twenty days.

(4) On or before the expiry of the period for name reservation under subsection (3) the applicant may make further successive applications pursuant to subsection (3) to reserve the specified name.

(5) Other than a company or entity registered or to be registered pursuant to Part IX of the Companies Law, no company or entity incorporated or registered, or company or entity proposed to be incorporated or registered, under the Companies Law shall be permitted to contain in its name the words “Limited Liability Company” or the abbreviation “L.L.C.” or “LLC”, which words shall be deemed to be calculated to deceive, and the Registrar of Companies shall not issue a certificate of incorporation, certificate of incorporation on change of name, certificate of registration or certificate of registration on change of name under the Companies Law in respect of any such company or entity or proposed company or entity until such time as its name or proposed name has been amended so as to comply with the provisions of this subsection provided that it shall remain permissible for a company incorporated or registered under the Companies Law prior to the commencement of this Law to continue to contain in its name the words “Limited Liability Company”, “L.L.C.” or “LLC”.

(6) A limited liability company’s dual foreign name shall only be entered on the Register if its translated name conforms with the provisions of this section and if it does not so conform then that dual foreign name and that translated name shall not be entered on the Register.

(7) If, through inadvertence or otherwise, a limited liability company on its first registration or on its registration by a new name or new translated name is registered by a name or a translated name which in any way contravenes this section or which, in the opinion of the Registrar, is misleading or undesirable, then the limited liability company may, with the sanction of the Registrar, change its name or its translated name as the case may be and shall, if the Registrar so directs, change its name or translated name within six weeks of the date of such direction or within such longer period as the Registrar may think fit.

(8) A limited liability company which defaults in complying with a direction under subsection (7) is liable to a fine of two hundred dollars for every day during which the default continues.

Registered Office

7. (1) A limited liability company shall have and maintain a registered office in the Islands for the service of process and to which all notices and communications may be addressed.

(2) A limited liability company may, subject to the terms of the LLC agreement, change the address of its registered office to another address in the Islands and shall, within thirty days of that change, file (whether an original, a copy or by permitted electronic means) with the Registrar an amendment to the registration statement specifying the new address of the registered office and by paying the prescribed fee.

(3) The person providing a registered office to a limited liability company may cease to act in that capacity by -

- (a) serving notice on any manager or member of the limited liability company; and
- (b) filing a copy of the notice with the Registrar including by permitted electronic means.

(4) A limited liability company that carries on its business or affairs without having a registered office in the Islands shall incur a penalty of two hundred dollars for every day during which its business or affairs is so carried on, starting on the first business day following the date of the filing of the notice with the Registrar referred to in subsection (3)(b), which penalty shall be a debt due to the Registrar.

(5) A person shall not provide a registered office to a limited liability company unless that person holds an appropriate licence under the Banks and Trust Companies Law (2013 Revision) or the Companies Management Law (2003 Revision) or is licensed as a mutual fund administrator under the Mutual Funds Law (2015 Revision).

(6) A person shall not be appointed by a limited liability company as the limited liability company's registered office provider without that person's prior written consent having been given to the limited liability company in respect of the appointment.

(7) Any member of the public shall be entitled to be informed by the Registrar, on request, of the location of the registered office of any limited liability company registered under this Law.

8. (1) If a change occurs in any matter specified in a limited liability company's registration statement, the limited liability company shall, within thirty days of that change, file a certificate of amendment to the registration statement (whether an original, a copy or by permitted electronic means) with the Registrar and pay the prescribed filing fee and if a default is made in compliance with this subsection, the limited liability company shall incur a penalty fee of two hundred dollars for each day that such default continues, which penalty shall be a debt due to the Registrar.

Amendment to
registration statement

(2) The certificate of amendment shall contain the following -

- (a) the name of the limited liability company; and
- (b) the amendment to the registration statement.

(3) Where a limited liability company changes its name or its dual foreign name, the Registrar, on receiving an amendment to the registration statement authorizing the change and, in the case of a limited liability company changing its dual foreign name, receiving its translated name, and on being satisfied that the change of name conforms with section 6, shall enter the new name and, if applicable, the new translated name on the Register in place of the former name and shall issue a certificate of registration altered to meet the circumstances of the case.

9. (1) A limited liability company shall not carry on business with the public in the Islands, except in furtherance of the business or affairs of the limited liability company carried on outside the Islands but nothing in this section shall be construed so as to prevent the limited liability company effecting and concluding contracts in the Islands and exercising in the Islands all of its powers necessary for, or ancillary to, the carrying on of its business or affairs outside the Islands.

Capacity and separate
legal personality

(2) If a limited liability company carries on any business in the Islands in contravention of subsection (1) then, without prejudice to any other proceedings that may be taken in respect of the contravention, the limited liability company and every manager of the limited liability company who is responsible for the contravention commits an offence and is liable on summary conviction to a fine of five hundred dollars for every day during which the contravention occurs or continues, and the limited liability company shall be liable to be immediately dissolved and removed from the Register in the discretion of the Registrar.

(3) From the date of registration, a limited liability company shall be a body corporate (with legal personality separate from that of its members from time to time) having the name contained in the certificate of registration, capable forthwith of exercising all the functions of a natural person of full capacity

irrespective of any questions of corporate benefit and, without limitation, having perpetual succession, the capacity to sue and to be sued, defend legal proceedings in its name, and with power to acquire, hold and dispose of property but with such liability on the part of the members to contribute to the assets of the limited liability company in the event of its being wound up as is provided pursuant to this Law.

(4) Unless its LLC agreement provides otherwise, a limited liability company has the power to do all things necessary or convenient to carry on its business or affairs, including, without limitation, power to -

- (a) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
- (b) sell, convey, mortgage, charge, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (c) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (d) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on, charge over or a security interest in any of its property, franchises, or income;
- (e) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (f) be a promoter, partner, member, associate, director or manager of any partnership, joint venture, trust, company, limited liability company or other entity or act as a general partner (sole or otherwise) of an exempted limited partnership or of any other limited partnership;
- (g) conduct its business or affairs, locate offices, and exercise the powers granted by this Law within or outside the Islands;
- (h) elect managers and appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and provide credit;
- (i) pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former members, managers, officers, employees, and agents;

- (j) make donations for the public welfare or for charitable, scientific, or educational purposes;
- (k) make payments or donations, or do any other act, not inconsistent with any applicable law, that furthers the purpose of the limited liability company;
- (l) make contracts of guaranty and suretyship, and enter into interest rate, currency, hedge or other swap agreements, or cap, floor, put, call, option, exchange or collar agreements, derivative agreements or other agreements similar to any of the foregoing; and
- (m) subject to the other provisions of this Law, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands.

(5) The existence of a limited liability company as a separate legal person shall continue until cancellation of the limited liability company's certificate of registration pursuant to this Law and the Registrar's recording the deregistration or striking off of the limited liability company from the Register.

PART 3 MEMBERSHIP

10. (1) In connection with the formation of a limited liability company, a person that is to be admitted as an initial member of the limited liability company shall be admitted upon the registration of the limited liability company. Admission of members

(2) After the formation of a limited liability company, a person may be admitted as a member of the limited liability company in the following circumstances -

- (a) in the case of a person acquiring an LLC interest from, or being issued with an LLC interest by, the limited liability company, at the time provided in and upon compliance with the LLC agreement provided that, if the LLC agreement does not so provide, then upon -
 - (i) the consent of all members; and
 - (ii) the person's admission being reflected in the records of the limited liability company;
- (b) in the case of a transferee of an LLC interest, as provided in this Law and at the time provided in and upon compliance with the terms of the LLC agreement or, if the LLC agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company;

- (c) unless otherwise provided in a plan of merger or consolidation, in the case of a person acquiring an LLC interest in a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with this Law, at the time provided in and upon compliance with the terms of the LLC agreement of the surviving or resulting limited liability company or otherwise in accordance with the plan of merger or consolidation; or
- (d) in connection with the continuation of a foreign entity as a limited liability company in the Islands in accordance with this Law or the conversion of an exempted company to a limited liability company in accordance with this Law, a person who is a member (or equivalent) of such foreign entity or a shareholder of such exempted company shall be deemed a member of the limited liability company from the time such continuation or conversion takes effect in accordance with this Law (without prejudice to their legal status as a member (or equivalent) of such foreign entity or as a shareholder of such exempted company prior to the time that such continuation or conversion takes effect).

(3) Provided that any and all requirements for or conditions to an admission contained in the LLC agreement have been complied with in respect of a person (or, to the extent permitted by the LLC agreement, waived), any such person, howsoever admitted, shall without the requirement for any further actions or formalities, be deemed to have become a member and adhered to and agreed to be bound by the terms and conditions of the LLC agreement from that date as if that person and all existing members and any other parties to the LLC agreement had together duly executed and delivered the LLC agreement whether as a deed or otherwise.

(4) Unless otherwise provided in an LLC agreement, a person may be admitted to a limited liability company as a member of the limited liability company and may receive an LLC interest in or be granted other rights in respect of the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company, subject to any provisions of the LLC agreement or this Law requiring amounts to be paid or property to be returned by the member to the limited liability company.

(5) A person may be admitted as the sole member of a limited liability company.

(6) Unless otherwise provided in an LLC agreement or any agreement with the limited liability company, a member shall have no pre-emptive right to

subscribe for any issue of LLC interests or for any other interest in a limited liability company.

(7) Unless otherwise provided in an LLC agreement, a member's LLC interest may (but need not) be evidenced by a certificate of LLC interest issued by the limited liability company.

(8) A certificate of LLC interest issued by or on behalf of a limited liability company specifying that a person is a member of that limited liability company (and specifying such additional information, if any, as the limited liability company may determine) and purportedly signed (including by facsimile or other electronically affixed signature) with the express or implied authority of the limited liability company is admissible in evidence as proof of that person's membership of the limited liability company and as proof of that additional information in respect of that member's LLC interest as may have been included in the certificate by the limited liability company.

(9) An LLC interest of a member in a limited liability company is personal estate and not of the nature of real estate.

(10) A member has no interest in any specific property of the limited liability company.

(11) Notwithstanding any other provision of this Law, a limited liability company shall not issue bearer LLC interests, bearer certificates or bearer coupons and any issue or purported issue of such shall be void.

(12) For the purposes of subsection (11), "bearer" means a document that does not record the owner's name and where title to the document or to what the document represents is transferred or purported to be transferred solely by delivery of such document.

11. (1) An LLC interest is, subject to the provisions of subsection 10(11), capable of being transferred in whole or in part as may be expressly permitted in the limited liability company's LLC agreement, provided that any requirements for or conditions to an admission contained in the LLC agreement have been complied with or waived.

Transfer of a limited liability company interest

(2) An assignee of a member's LLC interest that is not admitted as a member shall have no right to participate in the management of the business or affairs of the limited liability company except as provided in an LLC agreement or otherwise upon -

- (a) the approval of all of the members of the limited liability company which may be given (including in the LLC agreement) in advance of any transfer either generally or specifically; and
 - (b) compliance with the terms of the LLC agreement.
- (3) Unless otherwise provided in and subject to the provisions of the LLC agreement -
- (a) a member's rights to receive any payments or distributions in respect of that member's LLC interest are capable of assignment;
 - (b) an assignment of all or part of a member's rights to receive any payments or distributions in respect of that member's LLC interest does not entitle the assignee to become, or to exercise any rights (other than the right to receive such payments or distributions to which the assignor was entitled) or powers of, a member;
 - (c) a member ceases to be a member and to have the power to exercise any rights or powers of a member upon transfer of all of the member's LLC interest in accordance with the provisions of this Law; and
 - (d) a member may grant a security interest to a third party (a "secured party") in respect of any or all of the LLC interest of that member and any such security interest shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member (other than those rights or powers the subject of the security interest which security interest has become enforceable and in respect of which the limited liability company has received written notice at its registered office, such notice being signed by each of the secured party and the relevant member) unless that member transfers all of the member's LLC interest to the secured party in accordance with the provisions of this Law.
- (4) Unless otherwise provided in an LLC agreement and except to the extent assumed by agreement, unless and until an assignee of an LLC interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.
- (5) Any security interest over the whole or any part of an LLC interest granted in accordance with subsection (3) shall have priority according to the time that the written notice of such security interest, signed by each of the secured party and the relevant member, is validly served at the registered office of the limited liability company and such notice shall not be validly given unless it specifies the agreement pursuant to which the security interest is granted including the date thereof and the parties thereto, the identity of the grantor and

the grantee of the security interests and the LLC interest or part thereof that is subject to that security interest.

12. (1) An assignee of all or part of an LLC interest may become a member in respect of the assigned LLC interest -

Right of assignee to become a member

- (a) if permitted in the LLC agreement and in accordance with the terms of the LLC agreement; or
- (b) with the approval of all of the members of the limited liability company.

(2) An assignee who has become a member has, to the extent assigned and transferred, the rights and powers, and is subject to the restrictions and liabilities, of a member contained in the LLC agreement, this Law and any other applicable law.

(3) Notwithstanding subsection (2), unless otherwise provided in an LLC agreement or in an agreement between the limited liability company and the assignee, an assignee that becomes a member in respect of all or part of an LLC interest -

- (a) is liable for the obligations of the assignor to make contributions as provided for in section 21(1)(a) and (b) in respect of the LLC interest (or part thereof) so transferred; and
- (b) is not liable for any other obligations of the assignor incurred before the assignee is admitted unless otherwise agreed in writing by the assignor and assignee.

(4) Whether or not an assignee of an LLC interest becomes a member, the assignor is not released from liability to a limited liability company under sections 21(1)(c) and 25(2).

13. (1) A person ceases to be a member of a limited liability company upon the happening of any event provided in the limited liability company's LLC agreement in which the person is to cease to be a member.

Cessation of membership and effect of bankruptcy or death of a member

(2) If a member who is a natural person dies or a court of competent jurisdiction adjudges the member to be incompetent and appoints a personal representative to manage the member's property, then the executor or the member's estate or the member's personal representative, as applicable, may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including exercising any rights of transfer in respect of all or part of the member's LLC interest.

(3) If a member is an exempted company, limited liability company, exempted limited partnership, foreign entity or other entity and is being wound up or is dissolved or terminated and has not otherwise ceased to be a member pursuant to subsection (1), then, unless otherwise provided in the LLC agreement, the powers of that member (if any) may be exercised by such person as may be entitled to do so under applicable law.

Redemption and repurchase of a limited liability company interest

14. (1) Unless otherwise provided in the LLC agreement, a limited liability company may, for consideration or for no consideration, acquire, by purchase, redemption or otherwise, an LLC interest or other interest of a member in the limited liability company, provided that immediately following that acquisition, the limited liability company shall be able to pay its debts as they fall due in the ordinary course of business.

(2) Unless otherwise provided in the LLC agreement or agreed to by all members, any interest acquired under subsection (1) by the limited liability company shall be deemed cancelled on acquisition.

Withdrawal of a member

15. A member may withdraw from and cease to be a member of a limited liability company only at the time or upon the happening of events specified in an LLC agreement and in accordance with the LLC agreement or as otherwise provided in this Law or with the consent of all of the other members.

PART 4 LIMITED LIABILITY COMPANY AGREEMENT

Limited liability company agreement

16. (1) The member or members of a limited liability company shall enter into an LLC agreement to regulate the business or affairs of the limited liability company and the conduct of its business or affairs.

(2) Notwithstanding anything to the contrary that might be expressed in the LLC agreement, the LLC agreement shall be governed by Cayman Islands law.

(3) The LLC agreement (other than a registration statement) is not required to be filed or registered with the Registrar.

(4) A limited liability company is not required to execute its LLC agreement but is bound by the terms thereof whether or not signed by the limited liability company.

(5) A limited liability company may, and shall have the power to -

- (a) indemnify and hold harmless any member or manager or other person from and against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses; and
- (b) advance expenses with respect to any indemnity granted by the limited liability company.

17. (1) An LLC agreement may provide that a member or manager who fails to perform in accordance with, or to comply with the terms and conditions of, the LLC agreement shall be subject to specified remedies, sanctions or consequences.

Remedies for breach of a limited liability company agreement

(2) An LLC agreement may provide that upon the happening of an event specified in the LLC agreement, a member or manager shall be subject to specified remedies, sanctions or consequences.

(3) Any specified remedies, sanctions or consequences referred to in this section shall not be unenforceable solely on the basis that they are in the nature of a penalty or forfeiture.

(4) For the purposes of this section, remedies, sanctions or consequences may include, without limitation, any one or more of the following -

- (a) reducing, eliminating or forfeiting the member's LLC interest or any rights of the member under the LLC agreement;
- (b) subordinating the member's LLC interest to the LLC interests of non-defaulting members;
- (c) effecting a forced sale or forfeiture of the member's LLC interest;
- (d) arranging for the lending by other members or other persons to that member of the amount necessary to meet the member's remaining contribution;
- (e) providing for the fixing of the value of the member's LLC interest by appraisal or by a formula or otherwise and the redemption or sale of the member's LLC interest at such value;
- (f) providing for the payment of default interest; or
- (g) exercising any other remedy or consequence specified in the LLC agreement or available under applicable laws.

18. (1) No act of a limited liability company and no disposition of real or personal property to or by a limited liability company shall be invalid by reason only of the fact that the limited liability company was without capacity or power to perform the act or to dispose of or receive the property, but the lack of capacity or power may be asserted -

Lack of capacity or power; ultra vires

- (a) in proceedings by a member or manager against the limited liability company to prohibit the performance of an act, or the disposition of real or personal property by or to the limited liability company; or
- (b) in proceedings by the limited liability company, whether acting directly or through a liquidator or other legal representative or through members or managers of the company in a representative capacity, against the incumbent or former members or managers of the company for loss or damage through their unauthorized act.

Classes and voting

19. (1) An LLC agreement may, among other things -

- (a) provide for classes of LLC interests or groups of members having such relative rights, powers and duties as the LLC agreement may provide or permit, and may make provision for the future creation in the manner provided in the LLC agreement of classes of LLC interests or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes of LLC interests and groups of members;
- (b) provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or class of LLC interest or group of members, including an action to create under the provisions of the LLC agreement a class of LLC interest or group of members that was not previously outstanding or existing and an LLC agreement may provide that any member or class of LLC interests or group of members shall have no voting rights;
- (c) grant to all or certain identified members or a specified class of LLC interest or group of members the right to vote separately or with all or any class of LLC interest or group of members or managers, on any matter and voting by members may be on a per capita, number, financial interest, class, group or any other basis; or
- (d) specify provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(2) Unless otherwise provided in an LLC agreement, on any matter that is to be voted on, consented to or approved by members, the matter may be dealt with without a meeting, without prior notice and without a vote by consent in

writing, signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted.

(3) Unless otherwise provided in an LLC agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by the LLC agreement.

(4) Unless otherwise provided in an LLC agreement, a consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection.

(5) Where there are no members of a limited liability company with a right, pursuant to its LLC agreement, to vote on or consent to any matter upon which a vote or consent of members is sought or required pursuant to the LLC agreement or this Law, the members of that limited liability company that would (but for this subsection) not otherwise have the right to vote on or consent to such matter shall have the right to vote or consent to such matter by a simple majority in number of those members (until such time as there shall be at least one member of the limited liability company with the right, pursuant to its LLC agreement, to vote on or consent to such matter) and an LLC agreement may disapply the provisions of this subsection or provide for an alternative vote or written consent to be provided.

(6) Unless otherwise provided in an LLC agreement or this Law, any vote of members shall be passed if passed by a simple majority in number of the members entitled to vote on the matter.

(7) An LLC agreement may provide that the vote, consent or approval of a member shall be deemed to have been obtained or given to a matter where -

- (a) the member is given notice, in accordance with the provisions of the LLC agreement, of the matter in respect of which the member's vote, consent or approval is sought;
- (b) the notice sets out in sufficient detail the matter in respect of which the member's vote, consent or approval is sought;
- (c) the LLC agreement requires that, should the member not wish to vote in favour of or otherwise not consent to or approve the matter, the member give notice to the limited liability company of such within a particular period of time; and
- (d) the member does not give notice, in accordance with the provisions of the LLC agreement, to the limited liability

company that it does not wish to vote in favour of or otherwise not consent to or approve the matter within the particular period of time.

(8) Any vote, consent or approval of a member deemed to have been obtained or given to a matter pursuant to an LLC agreement and in accordance with subsection (7) shall be as effective as if the member had otherwise voted in favour of or expressly consented to or approved such matter in accordance with the provisions of the LLC agreement and this Law.

(9) Notwithstanding any other provision of this Law, consent or approval of members may be either -

- (a) express; or
- (b) inferred from a course of dealing.

PART 5 LIABILITY TO THIRD PARTIES AND CONTRIBUTIONS

Liability to third parties 20. (1) Subject to subsection (2), the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(2) Notwithstanding the provisions of subsection (1), under an LLC agreement or under another agreement, a member or manager may agree to be personally liable for any or all of the debts, obligations and liabilities of the limited liability company.

Contributions 21. (1) The liability of a member to contribute to the assets of a limited liability company shall be limited -

- (a) to the amount that the member has undertaken to contribute to the assets of the limited liability company, whether in the LLC agreement or otherwise;
- (b) to making such other payments or performing such services as are expressly set out in the LLC agreement or as have otherwise been agreed between the member and the limited liability company; and
- (c) to such other amounts as may be required to be paid or property required to be returned by the member to the limited liability company pursuant to the LLC agreement or this Law.

(2) Subject to the provisions of the LLC agreement, the contribution of a member to a limited liability company may be in cash, property, other assets, services rendered or an obligation to contribute cash or property or assets or to perform services.

(3) A contribution (other than cash in the functional currency of the limited liability company) may be deemed to have such value in the functional currency of the limited liability company as may be agreed between the member making the contribution and the limited liability company, subject to any provisions in this regard in the LLC agreement and such value shall be recorded in the books and records of the limited liability company.

(4) Unless otherwise provided in an LLC agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Law may be compromised only by consent of all the members and only if the limited liability company is able to pay its debts and will remain so immediately following the compromise.

(5) Notwithstanding the compromise, a creditor of a limited liability company who extends credit may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return (and the creditor has not otherwise agreed or consented to the compromise).

(6) A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member.

(7) Conditional obligations include contributions agreed to be paid or made by a member upon the request of a limited liability company prior to the time the request is made.

PART 6 ALLOCATIONS AND DISTRIBUTIONS

22. (1) The profits and losses of a limited liability company shall be allocated among the members, and among classes of LLC interests or groups of members, in the manner provided in its LLC agreement.

Allocation of profits and losses

(2) If the LLC agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

Allocation of distributions

23. (1) Distributions of cash or in kind by a limited liability company shall be made or paid among the members, and among classes of LLC interests or groups of members, in the manner provided in its LLC agreement.

(2) If the LLC agreement does not so provide, distributions shall be made or paid on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

Distributions

24. (1) The LLC agreement may provide for the payment of distributions in such manner, time and form as provided therein, including distributions in cash and in kind.

(2) An LLC agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

(3) Subject to the provisions of the LLC agreement and except as otherwise provided in this Law, to the extent and at the times or upon the happening of the events specified in an LLC agreement, a member is entitled to receive from a limited liability company distributions before the member's withdrawal from or otherwise ceasing to be a member of the limited liability company and before the dissolution thereof.

(4) Subject to the provisions of the LLC agreement and except as otherwise provided in this Law, upon ceasing to be a member pursuant to section 13 (other than by transfer of an LLC interest), the former member is entitled to receive from the limited liability company -

- (a) any distribution to which such member or former member is entitled under the LLC agreement; and
- (b) if not otherwise provided in the LLC agreement, within a reasonable time after ceasing to be a member, a distribution for an amount equal to the fair value of that former member's LLC interest as of the date of ceasing to be a member, based upon a good faith determination of that former member's right to share in distributions from the limited liability company.

Limitations on distributions

25. (1) A limited liability company shall not -

- (a) declare, make or pay a distribution to a member (including any distribution to be made or paid with respect to a member

- withdrawing from or otherwise ceasing to be a member of the limited liability company); or
- (b) release a member from any obligation (whether in respect of any obligation to make a contribution or otherwise) to the limited liability company,

to the extent that at the time of such distribution or purported release, the limited liability company is unable to pay its debts as they fall due in the ordinary course of business (including where such distribution or release would cause the limited liability company to be unable to pay its debts as they fall due in the ordinary course of business).

(2) A member who receives a distribution or is purportedly released from an obligation in violation of subsection (1), and who had actual knowledge at the time of the distribution or purported release that the distribution or release violated subsection (1), shall be liable to the limited liability company for the amount of the distribution or for performance of the obligation purportedly released.

(3) Subject to any express provision of the LLC agreement to the contrary, a member who receives a distribution or is released from an obligation in violation of subsection (1) and who did not have actual knowledge at the time of the distribution or release that the distribution or release violated subsection (1) shall, notwithstanding subsection (1), not be liable for the amount of the distribution or for performance of the obligation released.

PART 7 MANAGEMENT

26. (1) Unless otherwise provided in an LLC agreement, the management of a limited liability company shall be vested in its members acting by a majority in number; provided however that if an LLC agreement provides for the management, in whole or in part, of a limited liability company by one or more managers, the management of the limited liability company, to the extent so provided, shall be vested in the managers.

Vesting of management powers

(2) Unless otherwise provided in an LLC agreement, the members acting by a majority in number or a manager appointed pursuant to section 27(1) has the authority to bind the limited liability company.

(3) Subject to subsections (4) and (5), the rights and duties of the members and managers in a limited liability company shall, as between themselves, be determined by the LLC agreement.

(4) Subject to any express provisions of an LLC agreement to the contrary, a manager shall not owe any duty (fiduciary or otherwise) to the limited liability company or any member or other person in respect of the limited liability company other than a duty to act in good faith in respect of the rights, authorities or obligations which are exercised or performed or to which such manager is subject in connection with the management of the limited liability company provided that such duty of good faith may be expanded or restricted by the express provisions of the LLC agreement.

(5) Subject to any express provisions of an LLC agreement to the contrary and subsection (4), a member shall not owe any duty (fiduciary or otherwise) to the limited liability company or any member -

- (a) in exercising any of its rights or authorities in respect of the limited liability company; or
- (b) in performing any of its obligations under the LLC agreement to the limited liability company or to any member,

and where such member is exercising any vote, consent or approval right in respect of its LLC interest it may exercise such vote, consent or approval right in its own best interests and as it sees fit even though it may not be in the best interests of the limited liability company or any other member.

(6) Subject to subsection (4), a person serving on any board or committee (howsoever called) of a limited liability company -

- (a) shall, subject to any express provision of an LLC agreement to the contrary, not owe any duty (fiduciary or otherwise) to the limited liability company or to any member in serving on such board or committee or in exercising or not exercising any of the person's rights or authorities or otherwise with respect to any of the person's obligations with respect to such board or committee; and
- (b) may, if expressly permitted to do so by the LLC agreement, act in a manner which the person believes to be in the best interests of a particular member or members (even though it may not be in the best interests of all members or the limited liability company).

(7) Where an LLC agreement contains provisions for the establishment and regulation of any boards or committees of a limited liability company, its members or managers or any class or category of those members or managers (or representatives of any of such members or managers) including -

- (a) the establishment and constitution of such boards or committees;
- (b) the manner and terms of appointment and removal of the persons serving on such boards or committees;

- (c) the powers, rights, authorities, obligations and duties of the persons serving on such boards or committees;
- (d) the regulation of the proceedings of such boards or committees; and
- (e) the rights of the persons serving on, or persons who formerly served on, such boards or committees to exculpation or to be indemnified out of the assets of the limited liability company,

then, subject to the express provisions of such LLC agreement, any person duly appointed to serve on any such board or committee in accordance with such provisions shall be deemed to have notice of and shall have the benefit of such provisions which shall not be unenforceable by any such person in that person's own right by reason only that such person is not a party to the LLC agreement.

27. (1) A person, with their agreement, may be named or designated as a manager of the limited liability company in the manner provided in the LLC agreement. Managers

(2) The manager of a limited liability company shall have the rights, powers and responsibilities afforded to, and whether the manager is a party to the LLC agreement or not a party to the LLC agreement, be subject to the obligations of, such manager specified in, or pursuant to, the LLC agreement.

(3) Subject to section 32, a manager shall cease to be a manager in the manner provided in an LLC agreement, whether the manager is a party to the LLC agreement or not a party to the LLC agreement.

(4) A limited liability company may have more than one manager and any difference among two or more managers arising as to matters connected with the business or affairs of the limited liability company shall be decided by the manager or managers (or majority thereof) as is provided in the LLC agreement.

(5) A manager of a limited liability company may, if permitted by the LLC agreement, also be a member.

(6) A person who is both a manager and a member of a limited liability company has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in the LLC agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of the manager's participation in the limited liability company as a member.

28. (1) An LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the LLC agreement may Classes of manager and voting rights

provide, and may make provision for the future creation of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established.

(2) An LLC agreement may provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the LLC agreement a class or group of LLC interests that was not previously outstanding.

(3) An LLC agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter.

(4) An LLC agreement may provide that voting by managers shall be on a per capita, number, financial interest, class, group or any other basis.

(5) An LLC agreement may specify provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(6) Unless otherwise provided in an LLC agreement, on any matter that is to be voted on, consented to or approved by managers, the matter may be dealt with without a meeting, without prior notice and without a vote by consent in writing signed by the managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted.

(7) Unless otherwise provided in an LLC agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by the limited liability agreement.

(8) Unless otherwise provided in an LLC agreement, a consent transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for the purposes of this section.

(9) Where a limited liability company has more than one manager and this Law gives an authority, consent or power (but not an obligation or liability) to the

manager, the LLC agreement may specify which manager is entitled to exercise such authority, consent or power to the exclusion of any other manager.

29. An LLC agreement may provide that -

Remedies for breach of an LLC agreement by manager

- (a) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the LLC agreement shall be subject to specified consequences; and
- (b) at the time or upon the happening of events specified in the LLC agreement, a manager shall be subject to specified consequences.

30. (1) Unless otherwise provided in the LLC agreement, a manager has the power and authority to delegate to one or more other persons (including a board or committee) the manager's rights and powers to manage and control the business or affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by resolution, a management agreement or another agreement with, or otherwise to, such other persons.

Delegation of rights and powers to manage

(2) Unless otherwise provided in the LLC agreement, such delegation by a manager shall not cause the manager to cease to be a manager of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a manager of the limited liability company.

31. A manager shall be fully protected in relying in good faith upon the records of the limited liability company and upon such opinions, reports, statements or other information prepared or supplied and presented to the limited liability company by any of its other managers, members, officers, employees or committees of the limited liability company, professional advisers or by any other person, as to matters the manager reasonably believes are within such other person's knowledge or professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including opinions, reports, statements or other information as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

Reliance on reports and information by manager

32. (1) A manager may resign as a manager of a limited liability company -

Resignation of manager

- (a) at the time and in the manner specified in the LLC agreement (or any other agreement pursuant to which a manager is appointed) and in accordance therewith; or
- (b) with the consent of all of the members.

(2) Notwithstanding that an LLC agreement (or any other agreement pursuant to which a manager is appointed) provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the limited liability company and to all members and if the resignation of a manager violates an LLC agreement (or any other agreement pursuant to which a manager is appointed), in addition to any remedies otherwise available under applicable law, a limited liability company may seek to recover from the resigning manager damages for breach of the applicable agreement and be entitled to set-off the damages against any amount otherwise payable or distributable to the resigning manager.

Access to and
confidentiality of
information; records

33. (1) Unless otherwise provided in an LLC agreement, each member of a limited liability company has the right to inspect from time to time for any purpose reasonably related to the member's interest as a member of the limited liability company and within a reasonable period of time from demand made of the limited liability company -

- (a) true and full information regarding the state of the business and financial condition of the limited liability company;
- (b) the name and last known business, residence or mailing address of each manager;
- (c) a copy of the limited liability company's LLC agreement, registration statement, certificate of registration and all amendments thereto; and
- (d) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by such member and which such member has agreed to contribute in the future, and the date on which such member became a member.

(2) Each manager shall have the right to inspect all of the information described in subsection (1) for a purpose reasonably related to the position of manager.

(3) Except as provided in the LLC agreement, the manager of a limited liability company shall have the right to keep confidential from the members or managers of other classes of LLC interests, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interests of the limited liability company to disclose or could damage the limited liability company or its business or affairs by disclosure or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(4) A limited liability company may maintain its records in a form otherwise than legible provided that such form is capable of being reproduced in legible form.

(5) Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

(6) The rights of a member or manager to inspect or obtain information as provided in this section may be restricted in the LLC agreement.

34. Except as provided in an LLC agreement, a member or manager may lend to, borrow from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, a limited liability company and with or without interest or security as may be agreed, and shall have the same rights and obligations with respect thereto as a person who is not a member or manager.

Business transactions of member or manager with the limited liability company

PART 8
WINDING-UP OF A LIMITED LIABILITY COMPANY

35. A limited liability company may be wound up -

Winding Up

- (a) voluntarily;
- (b) compulsorily by the Court; or
- (c) under the supervision of the Court.

36. (1) A limited liability company shall be wound up voluntarily -

Voluntary winding up

- (a) when the term, if any, fixed for the duration of the limited liability company in its LLC agreement expires;
- (b) when an event, if any, specified in the LLC agreement following which the limited liability company is to be wound up, occurs;
- (c) subject to subsections (4) and (5), at any time when the limited liability company has no members; or
- (d) upon the affirmative vote or written consent of at least two-thirds in number of the members of the limited liability company, provided that the LLC agreement may expressly disapply the provisions of this subsection, or provide for an alternative vote or written consent to be provided.

(2) Except to the extent that such provisions are inconsistent with this Law, the provisions of Part V of the Companies Law and the Companies Winding Up Rules as applicable to voluntary liquidation shall apply *mutatis mutandis* to

the winding up and dissolution of a limited liability company and section 37(1)(a) to (d) of this Law shall apply accordingly.

(3) Subject to subsections (1)(b) and (c), the death, retirement, withdrawal, expulsion, bankruptcy, liquidation or dissolution of any member or the occurrence of any event that terminates the continued membership of any member shall not cause a limited liability company to be voluntarily wound up.

(4) The death of the sole or last member of a limited liability company shall not cause the limited liability company to be wound up pursuant to subsection (1)(c) and the personal representative, executor or other person or persons entitled to exercise the rights of the deceased pursuant to section 13(2) shall be deemed to be a member until the earlier of -

- (a) their ceasing to be the sole or last member; or
- (b) the dissolution of the limited liability company.

(5) Any person may apply to the Court for, and the Court may make, an order, subject to such conditions as the Court considers appropriate, to disapply subsection (1)(c) to a particular limited liability company in any particular circumstances and for such period of time as the Court may consider appropriate and an order may be applied for up to ninety days after the limited liability company having no member and, if granted, shall be deemed to take effect immediately prior to the limited liability company having no member.

Winding up by Court

37. (1) A limited liability company shall be compulsorily wound up by the Court or its voluntary winding up brought under the supervision of the Court in the same manner and circumstances as set out in Part V of the Companies Law and the Companies Winding Up Rules which, except to the extent such provisions are inconsistent with this Law, shall apply *mutatis mutandis* to the winding up and dissolution of a limited liability company, including as follows -

- (a) references in Part V of the Companies Law to a company shall include references to a limited liability company;
- (b) the members shall be treated as if they were shareholders of a company and references to contributories and shares in Part V of the Companies Law shall be construed accordingly;
- (c) references in Part V of the Companies Law to a director or officer of a company shall include references to the manager or managers of a limited liability company or to the extent no manager has been appointed, shall include references to the members of the limited liability company in whom management of the limited liability company is vested;
- (d) references in Part V of the Companies Law to articles of association shall include references to the LLC agreement;

- (e) the Insolvency Rules Committee established pursuant to the Companies Law shall have the power to make rules and prescribe forms for the purpose of giving effect to this Part 8 and any such rules made in respect of the winding up of a limited liability company shall then apply in lieu of any equivalent rule in the Companies Winding Up Rules; and
- (f) on application by a member, creditor or liquidator, the Court may make orders and give directions for the winding up and dissolution of a limited liability company as may be just and equitable.

(2) Where expressly provided for in an LLC agreement, a manager or, if no manager has been appointed, a member or members, shall have authority to present a winding up petition on behalf of the limited liability company upon the affirmative vote or written consent of at least two-thirds in number of the members or such other alternative vote or written consent as expressly provided for in the LLC agreement.

(3) Notwithstanding that a winding up order has been made, a creditor who has security over the whole or part of the assets of a limited liability company is entitled to enforce the creditor's security without the leave of the Court and without reference to the liquidator.

(4) Where the liquidator sells assets on behalf of a secured creditor, the liquidator is entitled to deduct from the proceeds of sale a sum by way of remuneration equivalent to that which is or would be payable under section 109 of the Companies Law as if the limited liability company were an exempted company.

38. (1) Subject to subsection (2), the assets of the limited liability company shall be applied in the following order of priority as between creditors and members in a winding up -

Distribution of assets

- (a) first, *pari passu* to creditors whose status as such is not derived from their membership, if any, of the limited liability company; and
- (b) unless otherwise provided in the LLC agreement -
 - (i) secondly, to persons who have become entitled to a distribution from the limited liability company in connection with an LLC interest, in order of priority of the time of such entitlement and to the extent thereof (and *pari passu* where entitlements are of equal priority); and
 - (ii) thirdly, to members in connection with and according to the rights of their LLC interest.

(2) The collection in and application of the property of the limited liability company referred to in subsection (1) is without prejudice to and after taking into account and giving effect to the rights of preferred and secured creditors and to any agreement between the limited liability company and any creditors that the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors and to any contractual rights of set-off or netting of claims between the limited liability company and any person or persons (including without limitation any bilateral or any multi-lateral set-off or netting arrangements between the limited liability company and any person or persons) and subject to any agreement between the limited liability company and any person or persons to waive or limit the same.

(3) In the absence of any contractual right of set-off, non-set-off or netting, an account shall be taken of what is due from each party to the other in respect of their mutual dealings and the sums due from one party shall be set-off against the sums due from the other.

Winding up petitions

39. The Court shall dismiss a winding up petition or adjourn the hearing of a winding up petition on the ground that a petitioner is contractually bound not to present a winding up petition against the limited liability company.

Removal of defunct limited liability companies

40. The provisions of Part VI of the Companies Law (removal of Defunct Companies) shall apply *mutatis mutandis* to limited liability companies including as follows -

- (a) references to members of a company in Part VI of the Companies Law shall be deemed to include reference to members of a limited liability company;
- (b) references to the Registrar in Part VI of the Companies Law shall be deemed to include the Registrar under this Law; and
- (c) references to directors and officers in Part VI of the Companies Law shall be deemed to include the manager or managers of a limited liability company or, if no manager has been appointed, to the members of the limited liability company in whom management of the limited liability company is vested.

Vesting of property

41. Any property vested in or belonging to a limited liability company that is removed from the Register pursuant to section 40 of this Law shall thereupon vest in the Financial Secretary and shall be subject to disposition by the Cabinet, or to retention for the benefit of the Islands.

PART 9
ARRANGEMENTS AND RECONSTRUCTION

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

Power to compromise with creditors and members

(2) If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the limited liability company or, where a limited liability company is in the course of being wound up, on the liquidator and contributories of the limited liability company.

(3) An order made under subsection (2) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the LLC agreement of the limited liability company issued after the order has been made.

(4) If a limited liability company makes default in complying with subsection (3), the limited liability company and every manager of the limited liability company who is in default shall be liable to a fine of two dollars for each copy in respect of which the default is made.

43. (1) Where an application is made to the Court under section 42 for the sanctioning of a compromise or arrangement proposed between a limited liability company and any such persons as are specified in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any limited liability company or companies or the amalgamation of any two or more companies (including any limited liability company), and that under the scheme the whole or any part of the undertaking or the property of any limited liability company concerned in the scheme (in this section referred to as a “transferor company”) is

Provision for facilitating reconstruction and amalgamation of limited liability companies

to be transferred to another company (including any limited liability company) (in this section referred to as the “transferee company”) the Court, may either by the order sanctioning the compromise or arrangement or by any subsequent order make provision for -

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
- (b) the allotting or appropriation by the transferee company of any LLC interests shares, debentures, policies, or other like interest (as applicable) in the transferee company which under the compromise or arrangement are to be allotted or appropriated by the transferee company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provisions to be made for any person who within such time and in such manner as the Court directs dissent from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and any such property shall, if the order so directs, be freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, every limited liability company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the limited liability company and every manager of the limited liability company who is in default shall be liable to a fine of two hundred dollars for each day that such default continues, which penalty shall be a debt due to the Registrar.

(4) In this section -

“property” includes property, rights and powers of every description;

“liabilities” includes duties; and

“transferee company” means any limited liability company or body corporate established in the Islands or in any other jurisdiction.

44. (1) Where a scheme or contract involving the transfer of LLC interests or any class of LLC interests in a limited liability company (in this section referred to as the “transferor company”) to any company, whether a limited liability company within the meaning of this Law or not (in this section referred to as the “transferee company”) has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than ninety per cent in value of the LLC interests affected (or such other threshold as may be specified in the LLC agreement), the transferee company may, at any time within two months after the expiration of the said four months, give notice in the prescribed manner to any dissenting members that it desires to acquire the member’s LLC interest, and where such notice is given the transferee company shall, unless on an application made by the dissenting member within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled and bound to acquire that LLC interest on the terms on which under the scheme or contract the LLC interests of the approving members are to be transferred to the transferee company.

Power to acquire LLC interests of dissenting members

(2) Where a notice has been given by the transferee company under this section and the Court has not, on an application made by the dissenting members ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given or, if an application to the Court by the dissenting members is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the LLC interests which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the member in respect of those LLC interests.

(3) Any sums received by the transferor company under this section shall be paid into a separate bank account and any such sums and any other consideration so received shall be held by the transferor company on trust for the several persons entitled to the LLC interests in respect of which the said sum or other consideration were respectively received.

(4) In this section “dissenting member” includes a member who has not assented to the scheme or contract and any member who has failed or refused to transfer that member’s LLC interest to the transferee company, in accordance with the scheme or contract.

(5) The provisions of subsections (1), (2), (3) and (4) may be disappplied in respect of a limited liability company if expressed to be disappplied in the limited liability company's LLC agreement.

PART 10
MERGER, CONSOLIDATION, DISCONTINUANCE AND
CONVERSION

Definitions in this Part

45. In this Part -

“consolidated entity” means the new entity that results from the consolidation of two or more constituent entities;

“consolidation” means the combination of two or more constituent entities into a consolidated entity and the vesting of the undertaking, property and liabilities of such constituent entities in the consolidated entity;

“constituent limited liability company” or “constituent entity” means a limited liability company or other entity that is participating in a merger or consolidation with one or more other entities;

“entity” means

- (a) an exempted company;
- (b) a limited liability company; or
- (c) a foreign entity provided that such foreign entity has separate legal personality;

“merger” means the merging of two or more constituent entities and the vesting of their undertaking, property and liabilities in one of such constituent entities as the surviving entity;

“parent entity” means, with respect to another entity, an entity that holds issued equity interests that together represent at least ninety per cent of the issued voting equity interests of that other entity;

“subsidiary entity” means, with respect to another entity, an entity of which that other entity is the parent entity; and

“surviving entity” means the sole remaining constituent entity into which one or more other constituent entities are merged.

46. (1) Two or more limited liability companies registered under this Law, may, subject to any express provisions to the contrary in the LLC agreement of any of such limited liability companies, merge or consolidate in accordance with subsections (3) to (15).

Merger and
consolidation

(2) Nothing in this Part shall derogate from the Authority's powers in relation to any constituent limited liability company that is a licensee under the regulatory laws and that proposes to participate in a merger or consolidation, or from a constituent limited liability company's obligations under the regulatory laws.

(3) The managers of each constituent limited liability company that proposes to participate in a merger or consolidation shall on behalf of the constituent limited liability company of which they are managers approve a written plan of merger or consolidation.

(4) The plan referred to in subsection (3) shall give particulars of the following matters -

- (a) the name of each constituent limited liability company and the name of the surviving or consolidated entity;
- (b) the registered office of each constituent limited liability company;
- (c) in respect of each constituent limited liability company, the designation of each class of its LLC interests;
- (d) the date on which it is intended that the merger or consolidation is to take effect, if it is intended to take effect in accordance with section 47, and not in accordance with subsection (13);
- (e) the terms and conditions of the proposed merger or consolidation, including where applicable, the manner and basis of converting LLC interests in each constituent limited liability company into interests in the consolidated or surviving entity or into other property as provided in subsection (5);
- (f) in respect of a merger, any proposed amendments to the registration statement of the surviving entity, or if none are proposed, a statement that the registration statement of the surviving entity immediately prior to the merger shall be its registration statement after the merger;
- (g) in respect of a consolidation, the proposed new registration statement of the consolidated entity;

- (h) any amount or benefit paid or payable to any manager of a constituent limited liability company, a consolidated entity or a surviving entity consequent upon the merger or consolidation;
- (i) the name and address of any secured creditor of a constituent limited liability company and of the nature of the secured interest held; and
- (j) the names and addresses of the managers of the surviving or consolidated entity.

(5) Some or all of the LLC interests, whether of different classes or of the same class in each constituent limited liability company, may be converted into or exchanged for different types of property (consisting of interests, debt obligations or other securities in the surviving entity or consolidated entity or any other corporate entity, or money or other property, or a combination thereof) as provided in the plan of merger or consolidation.

(6) A plan of merger or consolidation shall be authorized by each constituent limited liability company by way of -

- (a) the approval of a two thirds majority in number of the members of each such constituent limited liability company or in the case of a particular constituent limited liability company, such higher or lower threshold for approval as may be set out in its LLC agreement; and
- (b) such other authorization, if any, as may be specified in such constituent limited liability company's LLC agreement.

(7) Notwithstanding subsection (6)(a), if a parent entity registered under this Law is seeking to merge with one or more of its subsidiary entities registered under this Law, an approval under that subsection of the members of the constituent limited liability companies is not required if a copy of the plan of merger is given to every member of each such subsidiary entity to be merged unless the parent entity agrees otherwise.

(8) The consent of each holder of a fixed or floating security interest of a constituent limited liability company in a proposed merger or consolidation shall be obtained but, if the secured creditor does not grant its consent, the Court may, upon application of the constituent limited liability company that has granted the security interest, waive the requirement for that consent upon such terms as to security to be issued by the surviving or consolidated entity or otherwise as the Court considers reasonable.

(9) After obtaining any authorizations and consents under subsections (6) and (8), the plan of merger or consolidation shall be signed by a manager on

behalf of each constituent limited liability company and filed with the Registrar together with, in relation to each constituent limited liability company -

- (a) a certificate of good standing;
- (b) a manager's declaration that the constituent limited liability company is, and the surviving or consolidated entity will be, immediately after merger or consolidation, able to pay its debts as they fall due;
- (c) a manager's declaration that the merger or consolidation is *bona fide* and not intended to defraud unsecured creditors of the constituent limited liability companies;
- (d) a manager's declaration that -
 - (i) no petition or other similar proceeding has been filed and remains outstanding, and that no order has been made or resolution adopted to wind up the constituent limited liability company in any jurisdiction;
 - (ii) no receiver, trustee, liquidator or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the constituent limited liability company, its affairs, or its property or any part thereof; and
 - (iii) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the constituent limited liability company are, and continue to be, suspended or restricted;
- (e) a manager's declaration of the assets and liabilities of the constituent limited liability company made up to the latest practicable date before the making of the declaration;
- (f) an undertaking that a copy of the certificate of merger or consolidation under subsection (11) will be given to the members and creditors of the constituent limited liability company and that notification of the merger or consolidation will be published in the Gazette; and
- (g) a manager's declaration, where relevant, that the constituent limited liability company has complied with any applicable requirements under the regulatory laws.

(10) A manager's declaration under subsection (9) shall be in writing, signed by, and shall include the full name and address of, the manager making the declaration.

(11) Upon payment of the applicable fees under this Law and upon the Registrar being satisfied that the requirements of subsection (9) in respect of the merger or consolidation have been complied with and that the name of the surviving or consolidated entity complies with section 6, the Registrar shall register the plan of merger or consolidation including a new or amended

registration statement and issue a certificate of merger or consolidation under the Registrar's hand and seal of office, and in the case of a consolidation section 5(4) shall apply in relation to the consolidated entity.

(12) A certificate of merger or consolidation issued by the Registrar shall be prima facie evidence of compliance with all requirements of this Law in respect of the merger or consolidation.

(13) Subject to section 47, a merger or consolidation shall be effective on the date the plan of merger or consolidation is registered by the Registrar.

(14) A person who, being a manager, makes a false declaration under subsection (9) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of five years, or both.

(15) In any proceedings for an offence under subsection (14) it shall be a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by that person or any person under that person's control.

(16) Any manager's declaration pursuant to this section may be given in the form of a declaration or an affidavit, as the manager may determine.

(17) A plan of merger or consolidation approved in accordance with this section may -

- (a) effect any amendment to the LLC agreement; or
- (b) effect the adoption of a new LLC agreement for a limited liability company if it is the surviving or consolidated entity.

(18) Subject to section 47, any amendment to an LLC agreement or adoption of a new LLC agreement made pursuant to subsection (17) shall be effective at the effective time or date of the merger or consolidation.

Delay of effective date

47. A plan of merger or consolidation may provide that such merger or consolidation shall not become effective until a specified date or until the date of the occurrence of a specified event subsequent to the date on which the plan of merger or consolidation is registered by the Registrar, but such date shall not be a date later than the ninetieth day after the date of such registration.

Termination or amendment

48. (1) A plan of merger or consolidation may contain a provision that at any time prior to the date that the plan becomes effective it may be -

- (a) terminated by the managers of any constituent limited liability company; or

- (b) amended by the managers of the constituent limited liability companies to-
 - (i) change the name of the consolidated entity;
 - (ii) change the effective date of the merger or consolidation, provided that the new effective date complies with section 47; or
 - (iii) effect any other changes to the plan as the plan may expressly authorize the managers to effect in their discretion.

(2) If the plan of merger or consolidation is terminated or amended after it has been filed with the Registrar but before it has become effective, notice of termination or amendment of the plan shall be filed with the Registrar, and shall have effect on the date of registration by the Registrar after the Registrar has been satisfied in accordance with section 46 (11).

(3) A copy of the notice under subsection (2) shall be sent to any person entitled to vote on, consent to or be notified of the plan of merger or consolidation in accordance with section 46.

(4) The notice of termination or amendment filed in accordance with subsection (2) shall identify the plan of merger or consolidation that is to be terminated or amended and shall state that the plan has been terminated or state the amendments made and in the former case, the Registrar shall issue a certificate of termination.

49. (1) As soon as a merger or consolidation becomes effective -

Effect of merger or consolidation

- (a) in the case of a consolidation, the new registration statement filed with the plan of consolidation will be the registration statement of the consolidated entity;
- (b) the rights, the property of every description including choses in action, and the business, undertaking, goodwill, benefits, immunities and privileges of each of the constituent limited liability companies, shall immediately vest in the surviving or consolidated entity; and
- (c) subject to any specific arrangements entered into by the relevant parties, the surviving or consolidated entity shall be liable for and subject, in the same manner as the constituent limited liability companies, to all mortgages, charges or security interests, and all contracts, obligations, claims, debts, and liabilities of each of the constituent limited liability companies.

(2) Where a merger or consolidation occurs -

- (a) an existing claim, cause or proceeding, whether civil (including arbitration) or criminal, pending at the time of the merger or consolidation by or against a constituent limited liability company, shall not be abated or discontinued by the merger or consolidation but shall be continued by or against the surviving or consolidated entity; and
- (b) a conviction, judgment, ruling, order or claim, due or to become due, against a constituent limited liability company, shall not be released or impaired by the merger or consolidation, but shall apply to the surviving or consolidated entity instead of to the constituent limited liability company.

(3) Upon a merger or consolidation becoming effective, the Registrar shall strike off the Register -

- (a) a constituent limited liability company that is not the surviving entity in a merger; or
- (b) a constituent limited liability company that participates in a consolidation,

and section 158 of the Companies Law shall apply *mutatis mutandis*.

(4) The cessation of a constituent limited liability company that participates in a consolidation or that is not the surviving entity in a merger shall not be a winding up for the purposes of this Law or within Part V of the Companies Law.

Merger or consolidation
with exempted
companies

50. (1) One or more limited liability companies may merge or consolidate with one or more exempted companies, provided that the -

- (a) constituent limited liability companies must comply with section 46(3) to (10) of this Law;
- (b) constituent exempted companies must comply with section 233(3) to (10) of the Companies Law; and
- (c) no constituent exempted company may be a segregated portfolio company.

(2) Where the surviving or consolidated entity is to be established under this Law, upon payment of the applicable fees under this Law and upon the Registrar being satisfied that the requirements of subsection (1) in respect of the merger or consolidation have been complied with and that the name of the consolidated entity complies with section 6, the Registrar shall register the plan of merger or consolidation and issue a certificate of merger or consolidation under the Registrar's hand and seal of office, and in the case of a consolidation section 5(4) shall apply in relation to the consolidated entity.

(3) Where the surviving or consolidated entity is to be established as an exempted company, upon payment of the applicable fees under this Law and upon the Registrar being satisfied that the requirements of subsection (1) in respect of the merger or consolidation have been complied with, the Registrar shall, where the exempted company is the surviving or consolidated entity, strike off the constituent limited liability companies from the Register and issue a certificate of strike off by way of merger or consolidation with an exempted company, and section 158 of the Companies Law shall apply to the constituent limited liability companies so struck off *mutatis mutandis*.

51. (1) One or more limited liability companies may merge or consolidate with one or more foreign entities in accordance with subsections (2) to (17) provided that each such foreign entity has separate legal personality.

Merger or consolidation
with foreign companies

(2) Where the surviving or consolidated entity is to be a limited liability company, in addition to compliance by each constituent limited liability company with section 46 (3) to (10), the Registrar is required to be satisfied in respect of any constituent foreign entity that -

- (a) the merger or consolidation is permitted or not prohibited by the constitutional documents of the constituent foreign entity and by the laws of the jurisdiction in which the constituent foreign entity is existing, and that those laws and any requirements of those constitutional documents have been or will be complied with;
- (b) no petition or other similar proceeding has been filed and remains outstanding, and no order has been made or resolution adopted to wind up or liquidate the constituent overseas entity in the jurisdiction in which the constituent foreign entity is existing;
- (c) no receiver, trustee, liquidator or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the constituent foreign entity, its affairs or its property or any part thereof;
- (d) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the constituent foreign entity are and continue to be suspended or restricted;
- (e) the constituent foreign entity is able to pay its debts as they fall due and the merger or consolidation is *bona fide* and not intended to defraud unsecured creditors of the constituent foreign entity;
- (f) in respect of the transfer of any security interest granted by the constituent foreign entity to the surviving or consolidated entity -
 - (i) consent or approval to the transfer has been obtained, released or waived;

- (ii) the transfer is permitted by and has been approved in accordance with the constitutional documents of the constituent foreign entity; and
- (iii) the laws of the jurisdiction of the constituent foreign entity with respect to the transfer have been or will be complied with;
- (g) the constituent foreign entity will, upon the merger or consolidation becoming effective, cease to be incorporated, registered or exist under the laws of the relevant foreign jurisdiction; and
- (h) there is no other reason why it would be against the public interest to permit the merger or consolidation.

(3) Subsection (2)(a) to (g) shall be satisfied by filing with the Registrar a declaration of a manager of the surviving or consolidated entity to the effect that, having made due enquiry, the manager is of the opinion that the requirements of those paragraphs have been met and -

- (a) the declaration shall include a statement of the assets and liabilities of the constituent foreign entity made up to the latest practicable date before making the declaration; and
- (b) a manager of the surviving or consolidated entity shall be deemed to have made due enquiry for the purposes of subsection (2)(a) to (g) and this subsection if such manager has obtained from a manager (or equivalent) of the constituent foreign entity a declaration that the requirements of subsection (2)(a) to (g) have been met with respect to such constituent foreign entity.

(4) A person who, being a manager, makes a false declaration under subsection (3) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of five years, or both.

(5) In any proceedings for an offence under subsection (4), it shall be a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by that person or any person under that person's control.

(6) Where the surviving or consolidated entity is to be established under this Law, upon payment of the applicable fees under this Law and upon the Registrar being satisfied that the requirements of subsection (2) in respect of the merger or consolidation have been complied with and that the name of the consolidated entity complies with section 6, the Registrar shall register the plan of merger or consolidation including any new or amended registration statement and issue a certificate of merger or consolidation under the Registrar's hand and

seal of office, and in the case of a consolidation, section 5(4) shall apply in relation to the consolidated entity.

(7) Where the surviving or consolidated entity is to be a foreign entity the Registrar is required to be satisfied, in addition to compliance with section 46 (2) to (10) (excluding section 46(9)(f)), by each constituent limited liability company, that -

- (a) the merger or consolidation is permitted or not prohibited by the constitutional documents of the constituent foreign entity and by the laws of the jurisdiction in which the constituent foreign entity is existing, and that those laws and any requirements of those constitutional documents have been or will be complied with;
- (b) no petition or other similar proceeding has been filed and remains outstanding, and no order has been made or resolution adopted to wind up or liquidate the constituent foreign entity in any jurisdiction;
- (c) no receiver, trustee, liquidator or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the surviving entity, its affairs or its property or any part thereof;
- (d) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the surviving entity are suspended or restricted; and
- (e) there are no reasons why it would be against the public interest to allow the merger or consolidation.

(8) Subsection (7)(a) to (d) shall be satisfied by filing with the Registrar a declaration of a manager of each constituent limited liability company to the effect that, having made due enquiry, the manager is of the opinion that the requirements of those paragraphs have been met and a manager of each constituent limited liability company shall be deemed to have made due enquiry for the purposes of this subsection and subsection (7)(a) to (d) if such manager has obtained from a manager of the constituent foreign entity a declaration that the requirements of subsection (7)(a) to (d) have been met with respect to such constituent foreign entity.

(9) A person who, being a manager, makes a false declaration under subsection (8) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of five years, or both.

(10) Where the surviving or consolidated entity is to be a foreign entity, the surviving or consolidated foreign entity shall file with the Registrar -

- (a) an undertaking that it will promptly pay to the dissenting members of a constituent limited liability company registered under this Law the amount, if any, to which they are entitled under this Law; and
- (b) such evidence of the merger or consolidation from the jurisdiction of the surviving or consolidated foreign entity as the Registrar considers acceptable, such evidence to include the effective date of the merger or consolidation.

(11) The effect of a merger or consolidation where the surviving or consolidated entity is to be a foreign entity under this section is the same as in the case of a merger or consolidation under this Part if the surviving or consolidated entity is registered or established under this Law, and all of the relevant provisions of this Part apply, except insofar as the laws of the jurisdiction of the surviving or consolidated foreign entity otherwise provide.

(12) For the purposes of this section -

- (a) any references in section 46 to the LLC interests of any constituent limited liability company shall be deemed to include references to any other equity interests in such constituent entity;
- (b) any references in section 46 to the registration statement or LLC agreement shall be deemed to include references to the equivalent organizational documents of a foreign entity; and
- (c) any reference in section 46 or this section to a manager of a limited liability company shall be deemed to include a reference to any officer, member or other person (howsoever called) in whom the management of a foreign entity is vested.

(13) Where the surviving or consolidated entity is to be a foreign entity, upon payment of the applicable fees under this Law and upon the Registrar being satisfied that the requirements of subsections (7) and (10) have been complied with the Registrar shall, where the foreign entity is the surviving or consolidated entity, strike off any constituent limited liability company from the Register and issue a certificate of strike off by way of merger or consolidation with a foreign entity; and section 158 of the Companies Law shall apply *mutatis mutandis* to any constituent limited liability company so struck off.

(14) A certificate of strike off by way of merger or consolidation with a foreign entity issued by the Registrar shall be prima facie evidence of compliance with all requirements of this Law in respect of such merger or consolidation.

(15) Subject to section 47, a merger or consolidation shall be effective on the date the plan of merger or consolidation is registered by the Registrar.

(16) The issuance of a certificate of merger or consolidation relating to the merger or consolidation of a foreign entity registered under Part IX of the Companies Law shall be deemed to constitute notice to the Registrar of Companies pursuant to section 192 of the Companies Law.

(17) Any declaration of a manager pursuant to this section may be given in the form of a declaration or an affidavit, as the manager may determine.

52. (1) A member of a constituent limited liability company shall be entitled to such payment in respect of that member dissenting from the merger or consolidation as may be provided for in the constituent limited liability company's LLC agreement and, if no such payment is provided for in such LLC agreement, the member shall be entitled to an amount equal to the fair value of such member's LLC interest as of the date of the member's dissent, based upon a good faith determination of such member's right to share in distributions from the constituent limited liability company.

Rights of dissenters

(2) A member who desires to exercise that member's entitlement under subsection (1) shall give to the constituent limited liability company, before the vote on the merger or consolidation, written objection to the action.

(3) An objection under subsection (2) shall include a statement that the member proposes to demand payment for that member's LLC interest if the merger or consolidation is authorized by the vote.

(4) Within twenty days immediately following the date on which the vote of members giving authorization for the merger or consolidation is made, the constituent limited liability company shall give written notice of the authorization to each member who made a written objection.

(5) A member who elects to dissent shall, within twenty days immediately following the date on which the notice referred to in subsection (4) is given, give to the constituent limited liability company a written notice of that member's decision to dissent, stating -

- (a) the member's name and address;
- (b) the member's LLC interests in respect of which that member dissents; and
- (c) a demand for payment in respect of such LLC interests in accordance with subsection (1).

(6) A member who dissents may do so in respect of all or any portion of the LLC interests that the member holds in the constituent limited liability company.

(7) Upon the giving of a notice of dissent under subsection (5), the member to whom the notice relates shall cease to have any of the rights of a member in respect of the portion of the LLC interests which are the subject of the notice of dissent except the right to be paid for the relevant LLC interests pursuant to subsection (1) and the rights referred to in subsections (12) and (16).

(8) Within seven days immediately following the date of the expiration of the period specified in subsection (5), or within seven days immediately following the date on which the plan of merger or consolidation is filed, whichever is later, the constituent limited liability company, the surviving entity or the consolidated entity, shall make a written offer to each dissenting member to purchase that member's relevant LLC interests at the price determined in accordance with subsection (1) and if, within thirty days immediately following the date on which the offer is made, the entity making the offer and the dissenting member agree upon the price to be paid for that member's relevant LLC interests, the entity shall pay to the member the amount forthwith.

(9) If the entity and a dissenting member fail, within the period specified in subsection (8), to agree on the price to be paid for the relevant LLC interests owned by the member, within twenty days immediately following the date on which the period expires -

- (a) the entity shall (and any dissenting member may) file a petition with the Court for a determination of the price to be paid for the relevant LLC interests of all dissenting members in accordance with subsection (1); and
- (b) the petition by the entity shall be accompanied by a verified list containing the names and addresses of all members who have filed a notice under subsection (5) and with whom agreements as to the price to be paid for their relevant LLC interests have not been reached by the entity.

(10) A copy of any petition filed under subsection (9)(a) shall be served on the other party and where a dissenting member has so filed, the entity shall within ten days after such service file the verified list referred to in subsection (9)(b).

(11) At the hearing of a petition, the Court shall determine the price to be paid pursuant to subsection (1) for the relevant LLC interests of such dissenting members as it finds are involved, together with a fair rate of interest, if any, to be paid by the entity upon the amount so determined.

(12) Any member whose name appears on the list filed by the entity under subsection (9)(b) or (10) and who the Court finds is involved may participate

fully in all proceedings until the determination as to the price to be paid pursuant to subsection (1) is reached.

(13) The order of the Court resulting from proceeding on the petition shall be enforceable in such manner as other orders of the Court are enforced, whether the entity is incorporated or registered under the laws of the Islands or not.

(14) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances; and upon application of a member, the Court may order all or a portion of the expenses incurred by any member in connection with the proceeding, including reasonable attorney's fees and the fees and expenses of experts, to be charged *pro rata* against the value of all the LLC interests which are the subject of the proceeding.

(15) Any LLC interests acquired by the entity pursuant to this section shall be cancelled and, if they are interests of a surviving entity, they shall be available for re-issue.

(16) The enforcement by a member of the member's entitlement under this section shall exclude the enforcement by the member of any right to which that member might otherwise be entitled by virtue and in respect of that member's holding LLC interests the subject of this notice of dissent, pursuant to this section, except that this section shall not exclude the right of the member to institute proceedings to obtain relief on the ground that the merger or consolidation is void or unlawful.

53. (1) No rights under section 52 shall be available in respect of the LLC interests of any class for which an open market exists on a recognized stock exchange or recognized interdealer quotation system at the expiry date of the period allowed for written notice of an election to dissent under section 52(5), but this section shall not apply if the holders thereof are required by the terms of a plan of merger or consolidation pursuant to section 46, 50 or 51 to accept for such LLC interests, anything except -

Limitation on rights of dissenters

- (a) interests of a surviving or consolidated entity, or depository receipts in respect thereof;
- (b) interests of any other entity, or depository receipts in respect thereof, which interests or depository receipts at the effective date of the merger or consolidation, are either listed on a national securities exchange or designated as a national market system security on a recognized interdealer quotation system or held of record by more than two thousand holders;
- (c) cash in lieu of fractional interests or fractional depository receipts described in paragraphs (a) and (b); or

- (d) any combination of the interests, depository receipts and cash in lieu of fractional interests or fractional depository receipts described in paragraphs (a), (b) and (c).

(2) Rights under section 52 shall be available in respect of any class of interests of a constituent entity if the holders thereof are required by the terms of a plan of merger or consolidation pursuant to section 46, 50 or 51 to accept for such LLC interests anything except -

- (a) interests of a surviving or consolidated entity, or depository receipts in respect thereof;
- (b) interests of any other entity, or depository receipts in respect thereof, which shares or depository receipts at the effective date of the merger or consolidation, are either listed on a national securities exchange or designated as a national market system security on a recognised interdealer quotation system or held of record by more than two thousand holders;
- (c) cash in lieu of fractional interests or fractional depository receipts described in paragraphs (a) and (b); or
- (d) any combination of the interests, depository receipts and cash in lieu of fractional interests or fractional depository receipts described in paragraphs (a), (b) and (c).

Continuation of foreign entities

54. (1) Any foreign entity may apply to the Registrar to be registered by way of continuation as a limited liability company in the Islands by complying with this section and filing (including by permitted electronic means) with the Registrar -

- (a) an application for the continuation as a limited liability company executed by one or more authorized persons, which shall state -
 - (i) the date on which and jurisdiction where the foreign entity was first formed, registered, incorporated, created or otherwise came into being and the dates on which and the jurisdictions to which the foreign entity may have been subsequently migrated;
 - (ii) the name of the foreign entity immediately prior to the filing of the application for the continuation of a limited liability company;
 - (iii) the name of the limited liability company as specified in the registration statement filed in accordance with paragraph (b);
 - (iv) the future effective date or time (which shall be a date or time certain) of the continuation as a limited liability company if it is not to be effective upon the filing of the application for the continuation of limited liability company and the registration statement; and

- (v) the jurisdiction that constituted the principal place of business or central administration of the foreign entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the application for continuation of a limited liability company; and
 - (b) a registration statement that complies with section 5(2) that has been executed by one or more authorized persons.
- (2) The Registrar shall register an applicant if -
- (a) the applicant is formed, registered, incorporated or existing in a jurisdiction whose laws permit or do not prohibit the transfer of the applicant in the manner hereinafter provided in this Part (hereinafter in this section referred to as “a relevant jurisdiction”);
 - (b) the applicant has paid to the Registrar a fee equal to the fee payable on the registration of a limited liability company under section 5(2);
 - (c) the name of the applicant is acceptable to the Registrar;
 - (d) the applicant has filed (including by permitted electronic means) with the Registrar the documents described in subsection (1);
 - (e) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate (or to take any analogous steps) the applicant in any jurisdiction;
 - (f) no receiver, trustee, liquidator or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the applicant, its affairs or its property or any part thereof;
 - (g) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the applicant are and continue to be suspended or restricted;
 - (h) the applicant has confirmed that it is able to pay its debts as they fall due;
 - (i) the application for registration is *bona fide* and not intended to defraud existing creditors of the applicant;
 - (j) the applicant has delivered (including by permitted electronic means) to the Registrar an undertaking signed by an authorized person of the applicant that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the applicant;
 - (k) any consent or approval to the transfer required by any contract or undertaking entered into or given by the applicant has been obtained, released or waived, as the case may be;

- (l) the transfer is permitted by and has been approved in accordance with the charter documents of the applicant;
- (m) the applicant is formed, registered, incorporated or existing in a relevant jurisdiction and the laws of such relevant jurisdiction with respect to transfer have been or will be complied with;
- (n) the applicant is constituted in a form that has separate legal personality;
- (o) the applicant will, upon registration hereunder, cease to be formed, registered, incorporated or exist under the laws of the relevant jurisdiction;
- (p) the applicant, if it is (or will when registered by way of continuation be) prohibited from carrying on its business in or from within the Islands unless licensed or registered under any law, has applied for and obtained (or will, conditional upon its registration under this Law, be granted) the requisite licence or registration; and
- (q) the Registrar is not aware of any other reason why it would be against the public interest to register the applicant.

(3) Subsections (2)(e), (f), (g), (h), (i), (k), (l), (m), (n) and (o) shall be satisfied by filing with the Registrar a voluntary declaration or affidavit of an authorized person of the applicant to the effect that, having made due enquiry, the authorized person is of the opinion that the requirements of those paragraphs have been met, and which declaration or affidavit shall include a statement of the assets and liabilities of the applicant made up to the latest practicable date before making the declaration or affidavit and in determining whether subsection 2(p) has been satisfied, the Registrar may have regard to -

- (a) a voluntary declaration or affidavit of an authorized person of the applicant to the effect that, having made due enquiry, the authorized person is of the opinion that the requirements of subsection 2(p) have been met or do not apply; and
- (b) such other matters as the Registrar may consider appropriate.

(4) Upon registration of an applicant under this Part, the Registrar shall issue a certificate under the Registrar's hand and seal of office that the applicant is registered by way of continuation as a limited liability company and specifying the date of such registration, and section 5(4) shall apply *mutatis mutandis* with respect to such certificate.

(5) The Registrar shall enter in the Register the date of registration of the applicant and may enter such other matters as the Registrar considers appropriate pursuant to section 4(2).

(6) From the date of registration of the applicant it shall continue as a limited liability company for all purposes as if incorporated and registered as a limited liability company under and subject to this Law the provisions of which shall apply to the applicant and to persons and matters associated therewith as if the applicant were so incorporated and registered and -

- (a) the applicant shall have, but without limitation to the generality of the foregoing -
 - (i) the capacity to perform all the functions of a limited liability company;
 - (ii) the capacity to sue and to be sued and to defend legal proceedings in its name;
 - (iii) perpetual succession; and
 - (iv) the power to acquire, hold and dispose of property; and
- (b) the members of the limited liability company shall have such liability to contribute to the assets of the limited liability company in the event of its being wound up under this Law as is provided under this Law,

and in connection with a continuation under this subsection, rights or securities of, or interests in, the foreign entity that is to be continued as a limited liability company may be exchanged for or converted into cash, property, rights or securities of, or interests in, such limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another limited liability company or other entity.

(7) This section shall not operate -

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity or continuity of the applicant as previously constituted;
- (c) to affect the property of the applicant;
- (d) to affect any appointment made, resolution passed, vote cast, consent granted or any other act or thing done in relation to the applicant pursuant to a power conferred by any of the charter documents of the applicant or by the laws of the jurisdiction under which the applicant was previously formed, registered, incorporated or existing;
- (e) except to the extent provided by or pursuant to this Law, to affect the rights, powers, authorities, functions and liabilities or obligations of the applicant or any other person incurred prior to its continuation as a limited liability company in the Islands, or the personal liability of any person therefore; or
- (f) to render defective any legal proceedings by or against the applicant and any legal proceedings that could have been

continued or commenced by or against the applicant before its registration hereunder may, notwithstanding the registration, be continued or commenced by or against the applicant after registration.

(8) An applicant shall, within ninety days of registration make such amendments, alterations, modifications, variations, deletions and additions (in this section referred to as “changes”), if any, to its charter documents as are necessary to ensure that they comply with the requirements of this Law as they relate to a limited liability company.

(9) The Registrar shall forthwith give notice in the Gazette of the registration of an applicant under this Part, the jurisdiction under whose laws the applicant was previously incorporated, registered or existing and the previous name of the applicant if different from the current name.

(10) A person who makes a declaration or affidavit under subsection (3) without reasonable grounds therefor commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of five years, or both.

Deregistration of limited liability companies

55. (1) A limited liability company registered under this Law, which proposes to be registered by way of continuation as a foreign entity under the laws of any jurisdiction outside the Islands (hereinafter called a “transfer applicant”) may apply to the Registrar to be deregistered in the Islands.

(2) The Registrar shall so deregister a transfer applicant if -

- (a) the transfer applicant proposes to be registered by way of continuation in a jurisdiction which permits or does not prohibit the transfer of the transfer applicant in the manner provided in this section (hereinafter in this section referred to as “a relevant jurisdiction”);
- (b) the transfer applicant has paid to the Registrar on or before the date of and in respect of the application a fee equal to three times the annual fee that would have been payable pursuant to section 57(1) in the January immediately preceding the application for deregistration by the transfer applicant;
- (c) the transfer applicant has filed (including by permitted electronic means) with the Registrar notice of any proposed change in its name and of its proposed registered office or equivalent (and of its proposed agent for service of process, if applicable) in the relevant jurisdiction;

- (d) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the transfer applicant in any jurisdiction;
- (e) no receiver, liquidator, trustee in bankruptcy, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the transfer applicant, its affairs or its property or any part thereof;
- (f) no scheme, order, compromise or other similar arrangement has been entered into or made whereby the rights of creditors of the transfer applicant are and continue to be suspended or restricted;
- (g) the transfer applicant is able to pay its debts as they fall due;
- (h) the application for deregistration is *bona fide* and not intended to defraud creditors of the transfer applicant;
- (i) the transfer applicant has delivered (including by permitted electronic means) to the Registrar an undertaking signed by an authorized person on behalf of the limited liability company that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the transfer applicant, if any;
- (j) any consent or approval to the transfer required by any contract or undertaking entered into or given by the transfer applicant has been obtained, released or waived, as the case may be;
- (k) the transfer is permitted by and has been approved in accordance with the LLC agreement of the transfer applicant;
- (l) the laws of the relevant jurisdiction with respect to transfer have been or will be complied with;
- (m) the transfer applicant, if licensed or registered with the Authority under any of the regulatory laws in force in the Islands or previously licensed or registered with the Authority and that licence or registration was suspended or revoked and not reinstated, has obtained the consent of the Authority;
- (n) the transfer applicant will upon registration under the laws of the relevant jurisdiction continue as a foreign entity; and
- (o) the transfer applicant is in good standing with the Registrar, all outstanding fees due to the Registrar in relation to the transfer applicant are paid and the Registrar is not aware of any other reason why it would be against the public interest to deregister the transfer applicant.

(3) Subsection (2)(a), (d), (e), (f), (g), (h), (j), (k), (l), (m) and (n) shall be satisfied by filing with the Registrar a voluntary declaration or affidavit of an authorized signatory of the applicant to the effect that, having made due enquiry, the authorized signatory is of the opinion that the requirements of those paragraphs have been met and which declaration or affidavit shall include a

statement of the assets and liabilities of the transfer applicant made up to the latest practicable date before the making of the declaration or affidavit.

(4) Upon deregistration of a transfer applicant under this Part, the Registrar shall issue a certificate under the Registrar's hand and seal of office that the transfer applicant has been deregistered as a limited liability company and specifying the date of such deregistration.

(5) The Registrar shall enter in the Register the date of deregistration of the transfer applicant.

(6) From the commencement of the date of deregistration the transfer applicant shall cease to be a limited liability company for all purposes under this Law and shall continue as a foreign entity under the laws of the relevant jurisdiction except that this subsection shall not operate -

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity or continuity of the transfer applicant as previously constituted;
- (c) to affect the property of the transfer applicant;
- (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the transfer applicant pursuant to a power conferred by the LLC agreement of the transfer applicant or by the laws of the Islands;
- (e) except to the extent provided by or pursuant to this Law, to affect the rights, powers, authorities, functions and liabilities or obligations of the transfer applicant or any other person; or
- (f) to render defective any legal proceedings by or against the transfer applicant, and any legal proceedings that could have been continued or commenced by or against the transfer applicant before its deregistration hereunder may, notwithstanding the deregistration, be continued or commenced by or against the transfer applicant after deregistration.

(7) The Registrar shall forthwith give notice in the Gazette of the deregistration of a transfer applicant under this Part, the jurisdiction under the laws of which the transfer applicant has been registered by way of continuation and name of the transfer applicant, if changed.

(8) A person who makes a declaration or affidavit under subsection (3) without reasonable grounds therefor commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of five years, or both.

56. (1) Subject to this section, an exempted company (for the purposes of this section, a “conversion applicant”) may be reregistered as a limited liability company if -

Conversion of an exempted company to a limited liability company

- (a) the conversion applicant passes a special resolution that it should be so reregistered;
- (b) an application for reregistration is delivered (including by permitted electronic means) to the Registrar together with the necessary documents; and
- (c) the exempted company is not a segregated portfolio company.

(2) The special resolution shall adopt a registration statement of a limited liability company and an LLC agreement in conformity with the requirements of this Law to take effect upon registration of the conversion.

(3) The application shall be signed by a director or authorized person of the conversion applicant, and accompanied by a copy of the registration statement for the conversion applicant as a limited liability company.

(4) The conversion application shall be accompanied by a reregistration fee equal to the fee payable on the registration of a limited liability company pursuant to section 57(1).

(5) If, on an application under this section, the Registrar is satisfied that a conversion applicant may be reregistered under this section as a limited liability company, the Registrar shall -

- (a) retain (in such form as the Registrar may determine) the application and other documents delivered to the Registrar under this section;
- (b) issue to the conversion applicant a certificate of reregistration stating that the conversion applicant has been reregistered as a limited liability company; and
- (c) enter such details in the Register in respect of the limited liability company’s reregistration as the Registrar considers appropriate.

(6) Subject to subsection (7), upon the issue to a limited liability company of a certificate of reregistration under this section -

- (a) the conversion applicant, by virtue of the issue of that certificate, becomes a limited liability company;
- (b) the LLC agreement adopted in the special resolution shall take effect accordingly and the conversion applicant shall cease to be registered as an exempted company (and the register of exempted companies shall be updated accordingly) and the memorandum

and articles of association of the conversion applicant shall cease to have effect accordingly; and

- (c) any tax undertaking given to the conversion applicant pursuant to section 6 of the Tax Concessions Law (2011 Revision) shall not apply with respect to any date subsequent to the reregistration and the limited liability company may apply to the Cabinet for an undertaking pursuant to section 58 of this Law.

(7) Subsection (6) shall not operate -

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity or continuity of the conversion applicant;
- (c) to affect the property of the conversion applicant;
- (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the conversion applicant pursuant to a power conferred by the memorandum and the articles of association of the conversion applicant or by the laws of the Islands;
- (e) except to the extent provided by or pursuant to subsection (6)(b) to affect the rights, powers, authorities, functions and liabilities or obligations of the conversion applicant or any other person; or
- (f) to render defective any legal proceedings by or against the conversion applicant, and legal proceedings that could have been continued or commenced by or against the conversion applicant before its reregistration hereunder may, notwithstanding the reregistration, be continued or commenced by or against the conversion applicant after reregistration.

(8) A certificate of reregistration issued under this section is conclusive evidence that -

- (a) the requirements of this Law in respect of registration and of matters precedent and incidental thereto have been complied with; and
- (b) the conversion applicant is a limited liability company.

PART 11 MISCELLANEOUS

Annual returns

57. (1) A limited liability company shall, in January in every year file (including by permitted electronic means) with the Registrar a return signed by or on behalf of the limited liability company certifying that it has, during the calendar year, complied with the provisions of this Law and pay to the Registrar the prescribed annual fee.

(2) A limited liability company that defaults in submitting its annual return or fee specified in subsection (1) shall incur a penalty of -

- (a) 33.33% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between 1 April and 30 June;
- (b) 66.67% of the annual fee specified in subsection (1) if the return is submitted or the fee and penalty are paid between 1 July and 30 September; and
- (c) 100% of the annual fee specified in subsection (1) if the return is submitted and the fee and penalty are paid between 1 October and 31 December.

(3) A limited liability company which fails to comply with subsection (1) shall, subject to subsection (4), be deemed to be a defunct company and dealt with as such under section 40 but without prejudice to it being registered again as though it were being registered for the first time.

(4) Before taking action under subsection (3), the Registrar shall give six months' prior written notice to the defaulting limited liability company at its registered office in the Islands and, if the default is made good (including, without limitation, with respect to any penalties due under subsection (2)) before the expiry of such notice, subsections (1) and (2) shall be deemed to have been complied with.

58. (1) The Cabinet may on application give an undertaking in respect of a limited liability company that no law which is hereafter enacted in the Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to that limited liability company or to any member thereof in respect of the operations or assets of that limited liability company or membership interest of any member therein.

Tax undertaking

(2) Any undertaking given under subsection (1) may provide, in addition, that the aforesaid taxes and any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the limited liability company or the interests of members therein.

(3) An undertaking given under subsection (1) or (2) may be for a period not exceeding fifty years from the date of the approval of the application and may be in such form as the Cabinet may determine.

59. Where in this Law a filing is to be made with the Registrar, including by permitted electronic means, then such filing may be made either -

Filings by electronic means

- (a) by making the filing at the offices of the Registrar; or

- (b) by making the filing with the Registrar by permitted electronic means.

Application of other
Cayman Islands laws

60. Unless the context otherwise requires, and except in so far as inconsistent with the express provisions of this Law or the nature of a limited liability company -

- (a) references in other Laws of the Islands (other than for the Companies Law, except to the extent expressly provided otherwise in this Law) to a Cayman Islands “company” or to a “company formed under the Companies Law (2013 Revision)” or to a company “registered under the Companies Law” (or other similar reference to a company and the Companies Law) shall include a limited liability company formed or registered under this Law;
- (b) references to a “share” of such a company shall be deemed to include an LLC interest;
- (c) references to a “shareholder” of such a company shall be deemed to include a member of a limited liability company; and
- (d) references to a “director” of such a company shall be deemed to include references to a manager of the limited liability company.

Register of members

61. (1) A limited liability company shall maintain at its registered office or at any other place within or outside the Islands, a register of its members which shall contain the name and address of each person who is a member of the limited liability company, the date on which such person became a member and the date on which such person ceased to be a member, the time and date of receipt of any notices pursuant to section 11(5), and such register shall be updated within twenty-one days of any change in the particulars therein.

(2) Where the register of members is kept at a place other than the registered office of the limited liability company, the limited liability company shall maintain or cause to be maintained at the registered office of the limited liability company a record of the address at which the register of members is maintained, which record shall be updated within twenty-one days of the date of any change in the particulars therein.

(3) Subject to subsection (5), the register of members and the record of the address at which the register of members is maintained shall be open to inspection only by such persons -

- (a) as are expressly provided for in an LLC agreement; and
- (b) as otherwise permitted by the manager.

(4) The register of members shall be prima facie evidence of the matters which are directed by this Law to be inserted therein.

(5) Where the register of members is kept at a place other than the registered office of the limited liability company, the limited liability company shall make available at the registered office, in electronic form or any other medium, the register of members upon service of an order or notice by the Tax Information Authority pursuant to the Tax Information Authority Law (2014 Revision).

(6) A limited liability company making default in complying with this section shall incur a penalty of five thousand dollars which penalty shall be a debt due to the Registrar.

62. (1) A limited liability company shall maintain a register of its managers and a register of mortgages and charges in a similar manner to an exempted company incorporated or registered under the Companies Law in respect of its register of directors and officers and its register of mortgages and charges. Register of managers

(2) A register of managers shall contain the name and address of each manager.

(3) Except as otherwise provided in this Law, the provisions of the Companies Law with respect to such registers in respect of an exempted company shall apply, *mutatis mutandis*, to the corresponding registers to be maintained by a limited liability company including, without limitation, provisions as to -

- (a) the nature of the information to be included in such registers;
- (b) access to such registers by members, creditors or any other persons;
- (c) where, by whom and in what manner the registers may be maintained (including branch registers);
- (d) the filing (including by permitted electronic means) of the relevant register with the Registrar and any filing fees (and penalty fees for late filing) in respect of that register; and
- (e) any other penalty fees payable for failing to maintain the relevant register in the required manner.

63. (1) Every limited liability company shall cause to be kept proper books of account including, where applicable, material underlying documentation including contracts and invoices, with respect to - Accounts and Records

- (a) all sums of money received and expended by the limited liability company and matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the limited liability company; and
- (c) the assets and liabilities of the limited liability company.

(2) For the purposes of subsection (1), proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the business and financial condition of the limited liability company and to explain its transactions.

(3) Every limited liability company shall maintain or cause to be maintained in any country or territory, a record of the amount and date of the contribution of each member and the amount and date of any payment representing a distribution or, otherwise, a return of the whole or any part of the contribution of any member, which records shall be updated within twenty-one days of the date of any change in particulars.

(4) Where the limited liability company causes the books of account described in subsection (1) or records described in subsection (3) to be kept at any place other than at the registered office of the limited liability company or at any other place within the Islands, the limited liability company shall, upon service of an order or notice by the Tax Information Authority pursuant to the Tax Information Authority Law (2014 Revision), cause to make available, in electronic form or any other medium, at its registered office copies of its books of account or records, or any part or parts thereof, as are specified in such order or notice.

(5) A limited liability company shall cause all books of account required to be kept under subsection (1) to be retained for a minimum period of five years from the date on which they are prepared.

(6) A limited liability company that contravenes subsection (1) or (5) shall be subject to a penalty of five thousand dollars, which penalty shall be a debt due to the Registrar.

Agreement as to benefits

64. A person who has executed the LLC agreement of a limited liability company or who is named or otherwise identified (including as a class) in that LLC agreement shall not be deemed to be or otherwise construed as a member of that limited liability company -

- (a) if that person has executed the LLC agreement solely in order to take the benefit of a provision of, or assume an obligation under, the LLC agreement otherwise than as a member; or
- (b) where, on proper construction of the LLC agreement, the parties did not intend that person to be a member of that limited liability company.

Per diem penalty cap

65. Notwithstanding any provision of this Law which prescribes a specific *per diem* penalty in respect of a default under this Law, in any case where -

- (a) the *per diem* penalty for a particular default is -
 - (i) less than two hundred dollars and the aggregate amount of the *per diem* penalties in respect of such default has exceeded one thousand dollars; or
 - (ii) two hundred dollars or more and the aggregate amount of the *per diem* penalties in respect of such default has exceeded the amount of five thousand dollars; and
- (b) the Registrar is satisfied that the default is not due to wilful default,

it shall be lawful for the Registrar to accept, at any time, payment of a penalty in the amount of one thousand dollars or five thousand dollars, as the case may be, in respect and in lieu thereof.

66. (1) Contracts, deeds, instruments under seal or other instruments on behalf of a limited liability company may be made as follows - Contracts

- (a) a contract or other instrument which, if made between individuals, would by law be required to be in writing, and to be made by deed or under seal, and a deed or instrument under seal may be made by instrument -
 - (i) sealed with any seal of the limited liability company; or
 - (ii) which is executed on behalf of the limited liability company by any person acting under the express or implied authority of the limited liability company and which is either expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed or instrument under seal;
- (b) any contract or other instrument which, if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith may be made on behalf of the limited liability company in writing, signed by any person acting under the express or implied authority of the limited liability company; and
- (c) any contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the limited liability company by any person acting under the express or implied authority of the limited liability company.

(2) Where a contract or other transaction purports to be made by a limited liability company or by a person on its behalf at a time when the limited liability company has not been registered pursuant to this Law, then subject to any agreement to the contrary, the contract or other transaction has effect as one entered into by the person purporting to act on behalf of the limited liability

company and, subject to subsection (3), that person is personally liable on the contract or other transaction.

(3) A contract or other transaction purported to be entered into by a limited liability company prior to its registration pursuant to this Law or by a person on behalf of the limited liability company prior to its registration may be ratified by the limited liability company after its registration and thereupon the limited liability company shall become bound by and entitled to the benefit thereof from the date of registration, and the person so entering into such contract or other transaction shall be deemed to have been duly authorized to act on behalf of the limited liability company and shall cease to be personally liable on the contract or other transaction.

(4) Any contract, deed or other instrument made according to this section may be varied or discharged in the same manner as it is authorized by this section to be made.

(5) All contracts, deeds or other instruments made according to this section shall be effectual in law and shall be binding upon the limited liability company and its successors and all other parties thereto, their heirs, executors or administrators, as the case may be.

Prohibited sale of securities

67. A limited liability company that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitation to the public in the Islands to subscribe for any of its securities.

Electronic business by limited liability companies

68. Nothing in this Law shall prohibit a limited liability company from offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands.

Regulations

69. The Cabinet may make Regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law and in particular -

- (a) prescribing the duties to be performed by the Registrar for the purposes of this Law;
- (b) prescribing the forms to be used for the purposes of this Law;
- (c) prescribing the fees payable to the Registrar in respect of filings or certifications or otherwise pursuant to this Law;
- (d) prescribing the procedures for registration of limited liability companies; and

- (e) providing for such matters as may be necessary or convenient for carrying out or giving effect to this Law and its administration.

Passed by the Legislative Assembly the day of , 2015.

Speaker.

Clerk of the Legislative Assembly.