

A BILL

entitled

LIMITED LIABILITY COMPANY ACT 2016

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SCHEDULE Consequential amendments

WHEREAS it is expedient to make provision for the formation of limited liability companies and connected matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Limited Liability Company Act 2016.

Interpretation

- 2 In this Act unless the context otherwise requires—
- “appointed jurisdiction” has the meaning assigned to it in section 2(1) of the Companies Act 1981;
 - “appointed newspaper” has the meaning assigned to it in section 2(1) of the Companies Act 1981;
 - “appointed stock exchange” has the meaning assigned to it in section 2(1) of the Companies Act 1981;
 - “authorised person” means any person with authority to act on behalf of and bind any other person;
 - “Authority” means the Bermuda Monetary Authority established under section 2 of the Bermuda Monetary Authority Act 1969;
 - “Bermudian” has the meaning assigned to it in section 9;
 - “certificate of formation” means the certificate of formation referred to in section 30, and the certificate as amended or restated;

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- “company” has the meaning assigned to it in section 2(1) of the Companies Act 1981;
- “competent regulatory authority” has the meaning assigned to it in section 2(1) of the Companies Act 1981;
- “contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company, in the person's capacity as a member;
- “Court” means the Supreme Court of Bermuda;
- “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 directly reproduced in paper form by such a recipient through an automated process;
- “exempted company” has the meaning assigned to it in section 2(1) of the Companies Act 1981;
- “exempted LLC” has the meaning assigned to it by section 21;
- “exempted limited partnership” means a partnership registered under the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883;
- “exempted partnership” means an exempted partnership registered under the Exempted Partnerships Act 1992;
- “exempted undertaking” has the meaning assigned to it in section 2(1) of the Companies Act 1981;
- “foreign entity” means any body corporate existing under the laws of any jurisdiction other than Bermuda;
- “foreign limited liability company” means a limited liability company existing under the laws of any jurisdiction other than Bermuda and denominated as such under the laws of such jurisdiction;
- “knowledge” means a person's actual knowledge of a fact, rather than the person's constructive knowledge of the fact;
- “legal representative” means a person admitted to practise law as a barrister and attorney under section 51 of the Supreme Court Act 1905;
- “Licensed Corporate Service Provider” means a corporate service provider holding an unlimited licence under the Corporate Service Provider Business Act 2012 ;
- “liquidator” means a person carrying out the winding up of a limited liability company pursuant to Part 13;
- “limited liability company” or “LLC” means a limited liability company formed in accordance with section 29 with one or more members and unless otherwise

expressly provided shall be construed as including a local LLC and an exempted LLC;

“LLC agreement” means any agreement (whether referred to as an LLC agreement, operating agreement or otherwise), written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business;

“LLC interest” means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets;

“local company” has the meaning assigned to it in section 2(1) of the Companies Act 1981;

“local LLC” means a limited liability company formed under this Act other than an exempted LLC;

“manager” means a person who is named, designated or appointed as a manager of a limited liability company as provided under section 58 or, where there is no such manager, any member who participates materially in the management of the limited liability company;

“member” means a person who is admitted to a limited liability company as a member as provided in sections 45 and 84 or, in the case of a foreign limited liability company, in accordance with the laws of the jurisdiction under which the foreign limited liability company is formed;

“Minister” means the Minister responsible for companies;

“mutual fund” has the meaning assigned to it in section 156A of the Companies Act 1981;

“officer” includes any person named, designated, appointed or as director or secretary of a limited liability company, or any person employed in an executive capacity by a limited liability company;

“Official Receiver” means the Official Receiver appointed under the Companies Act 1981 or such other person as may be performing his duties under this Act who shall exercise the powers and discharge the duties conferred or imposed thereon by this Act and who shall be a public officer;

“personal representative” means—

- (a) as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof or any authorised person; and
- (b) as to a person other than a natural person, any authorised person or the legal representative or successor thereof;

“prescribed” means prescribed by regulations or rules under this Act;

“receiver” means a receiver or manager of the property of a limited liability company;

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“register” means the register of limited liability companies kept and maintained under section 31;

“register of charges” means the register of charges referred to in Part 14;

“register of members” means the register of members of the limited liability company referred to in section 55; and

“Registrar” means the Registrar of Companies appointed under the Companies Act 1981 or such other person as may be performing his duties under this Act who shall exercise the powers and discharge the duties conferred or imposed thereon by this Act and shall be a public officer.

Interpretation of subsidiary, holding company etc.

3 (1) For the purposes of this Act, a company or a limited liability company is a subsidiary of another company or limited liability company only if—

- (a) it is controlled by—
 - (i) that other company or limited liability company;
 - (ii) that other company or limited liability company and one or more companies or limited liability companies each of which is controlled by that other company or limited liability company; or
 - (iii) two or more companies or limited liability companies each of which is controlled by that other company or limited liability company; or
- (b) it is a subsidiary of a subsidiary of that other company or limited liability company.

(2) For the purposes of this Act, a company or limited liability company is the holding company or holding limited liability company of another company or limited liability company only if that other company or limited liability company is its subsidiary.

(3) For the purposes of this Act, one company or limited liability company is affiliated with another company or limited liability company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or limited liability company or each of them is controlled by the same person.

(4) For the purposes of this section, a company or a limited liability company is controlled by another company or limited liability company or person or by two or more companies or limited liability companies only if—

- (a) shares or LLC interests of the first-mentioned company or limited liability company carrying more than 50 percent of the votes for the election of directors or in the case of a limited liability company more than 50 percent of the total value of LLC interests otherwise than by way of security only, by or for the benefit of that other company or limited liability company or person or by or for the benefit of those other companies or limited liability companies;

- (b) in the case of a company, the votes carried by such shares are sufficient, if exercised, to elect a majority of the directors of the first-mentioned company; and
- (c) in the case of a limited liability company which has a manager, the votes carried by such limited liability company are sufficient, if exercised, to elect a majority of managers of the first-mentioned limited liability company.

Appointment of Registrar

4 The Registrar of Companies and the Official Receiver who are public officers appointed under the Companies Act 1981 shall have the powers and discharge the duties conferred or imposed upon them by this Act.

LLC agreement

5 (1) The member or members of a limited liability company shall enter into an LLC agreement in accordance with this section.

(2) An LLC agreement may be entered into, or otherwise existing, either before, after or at the time of the filing of a certificate of formation and, whether entered into or otherwise existing before, after or at the time of such filing, may be made effective as of the effective time of such filing or at such other time or date as provided in or reflected by the LLC agreement.

(3) A member or manager of a limited liability company or an assignee of an LLC interest is bound by and entitled to enforce the LLC agreement whether or not the member or manager or assignee executes the LLC agreement.

(4) A limited liability company is not required to execute its LLC agreement and is bound by and entitled to enforce its LLC agreement whether or not the limited liability company executes its LLC agreement.

(5) An LLC agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the LLC agreement.

(6) An LLC agreement may provide rights to any person, including a person who is not a party to the LLC agreement, to the extent set forth therein, and such person shall be entitled to enforce such rights notwithstanding that he is not a party to the LLC agreement.

(7) A written LLC agreement or another written agreement or other document—

- (a) may provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of an LLC interest or other rights or powers of a member to the extent assigned—
 - (i) if such person, or such person's authorised person executes the LLC agreement or other document evidencing the intent of such person to become a member or assignee of an LLC interest or other rights or powers of a member; or

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- (ii) without such execution, if such person, or such person's authorised person complies with the conditions for becoming a member or assignee of an LLC interest or other rights or powers of a member as set forth in the LLC agreement or other document; and
- (b) shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph (a) above, or by reason of its having been signed by a representative as provided in this subsection.

Governing law of LLC agreements

6 The governing law of an LLC agreement of a limited liability company formed under this Act is the law of Bermuda.

Name set forth in certificate

7 (1) The name of a limited liability company as set forth in its certificate of formation —

- (a) shall contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC" at the end of its name and, those words and that abbreviation and designation may be used interchangeably;
- (b) may contain the name of a member or manager;
- (c) shall be in roman script and may be preceded by or followed with a secondary name in a script other than roman script;
- (d) must not—
 - (i) be identical with the name by which a limited liability company is formed under this Act or by which a company is registered or incorporated under the Companies Act 1981 or any other Act or so nearly resembles that name as to be likely to deceive unless that limited liability company or company (as the case may be) signifies its consent in such manner as the Registrar may require;
 - (ii) contain the words "Chamber of Commerce", or in the opinion of the Registrar suggest or be likely to suggest the patronage of Her Majesty or of any member of the Royal Family or connection with any government whether of Bermuda or elsewhere;
 - (iii) contain the word "municipal" or "chartered" or in the opinion of the Registrar suggest, or be likely to suggest, connection with any public board or other local authority or with any society or body incorporated by Royal Charter;
 - (iv) contain the word "co-operative"; or
 - (v) contain the words "building society".

(2) The Registrar may, if in his opinion the name is not undesirable, upon application by any person seeking to form, continue as, convert into, change the name of,

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or adopt or change a secondary name for, a limited liability company, reserve a name for the exclusive use of the applicant for a period not exceeding three months from the date of receipt of the application.

(3) For the purposes of this Act—

“primary name” means the name of a limited liability company stated in its certificate of formation that is in roman script or the changed name of the limited liability company approved by the Registrar under subsection (2); and

“secondary name” means the name of a limited liability company stated in its certificate of formation that is in a script other than roman script and is in addition to, but shall not be considered part of, the primary name of the limited liability company.

Secondary name

8 (1) A limited liability company may adopt a secondary name by filing with the Registrar—

- (a) its certificate of formation under section 27 including its secondary name together with a certificate signed by an authorised person and sworn before a person authorised to administer oaths certifying the accuracy of the English translation of the secondary name and certifying that the person is fluent in the language and script used to express the secondary name; and
- (b) a copy of the text of the secondary name in electronic form suitable for it being reproduced in the register.

(2) The Registrar is not required to use the secondary name of a limited liability company in certifying any documents in the register and the Registrar does not warrant the accuracy or validity of the secondary name.

(3) A limited liability company may only use its secondary name on a document if its primary name is also shown on the document in close proximity to the secondary name, except that at no time shall the limited liability company be required to use its secondary name.

(4) The registration of a secondary name of a limited liability company or the use by a limited liability company of a secondary name does not affect the rights and obligations of the limited liability company or render defective any legal proceedings that are continued or commenced by or against the limited liability company in its primary name.

PART 2

LOCAL LLCS

Interpretation of Part 2

9 (1) For the purposes of this Act, the following shall be deemed to be “Bermudian”—

- (a) any company deemed to be “Bermudian” pursuant to section 113 of the Companies Act 1981;
- (b) the Government or any corporation or limited liability company of which the majority of the directors, managers, or trustees are subject to appointment by the Governor or a Minister;
- (c) any person who has Bermudian status by virtue of the law relating to immigration from time to time in force;
- (d) a local LLC in which the percentage of value of LLC interests beneficially owned by Bermudians is not less than 80 percent of the total value of LLC interests of that limited liability company;
- (e) a local statutory corporation or a local statutory LLC;
- (f) a local LLC—
 - (i) the LLC interests of which are, at the relevant time, listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry; or
 - (ii) licensed under this Act;
- (g) a wholly-owned subsidiary company or LLC of a local LLC so far, and so long as, that local LLC is complying with this Act and for so long as the subsidiary company or LLC abides by all the obligations of its parent LLC and does nothing in Bermuda that its parent LLC is unable lawfully to do; and
- (h) a trust of which the majority of the trustees are persons with Bermudian status by virtue of the law relating to immigration from time to time in force and the trust is established for the benefit of Bermuda, Bermudians or things Bermudian.

(2) For the purposes of subsection (1), a company or limited liability company shall be deemed to be a wholly-owned subsidiary of a limited liability company if the latter limited liability company enjoys the beneficial interest in all the LLC interests or shares of such company or limited liability company through beneficial ownership or as beneficiary under a trust, express or implied, or through a nominee, to the exclusion of any other person, and control in such company or limited liability company cannot, by means of any arrangement, artifice or device, be exercised either directly or indirectly by persons who are not Bermudians.

- (3) No LLC interest shall be deemed to be beneficially owned by a Bermudian if—
- (a) that Bermudian is in any way under any obligation to exercise any right attaching to that LLC interest at the instance of, or for the benefit of, any person who is not Bermudian;
 - (b) that LLC interest is held jointly or severally with any person who is not Bermudian; or

(c) that LLC interest is owned by a subsidiary company or subsidiary limited liability company of the limited liability company concerned.

(4) For the purposes of this Part, the expression “local statutory corporation” means a corporation sole or a corporation aggregate, other than a company, incorporated by an Act, the principal functions of which relate to operations and affairs in Bermuda.

(5) For purposes of this Part—

“designated stock exchange” means the Bermuda Stock Exchange or such other stock exchange as the Minister may designate by order;

“prescribed industry” means telecommunications, energy, hotel operations or international transportation services (by ship or aircraft).

(6) The Minister may, for the purpose of revising the categories of industry under the definition of “prescribed industry” in subsection (6), by order amend the definition.

(7) An order under subsection (6) or (7) shall be subject to the negative resolution procedure.

(8) A limited liability company shall, 15 days prior to carrying out an intention to rely on the provisions of subsection (2)(f)(i) or to carrying on business in reliance upon the provisions of section 10(1), notify the Minister of the designated stock exchange on which its LLC interests are listed and the prescribed industry in which it is engaged as a business in a material way, and on expiry of such notice the limited liability company shall be entitled to rely on the foregoing sections.

Circumstances in which local LLCs may carry on business

10 (1) No local LLC shall carry on business of any sort in Bermuda unless—

- (a) it is a limited liability company which, at the relevant time, complies with this Part or is a wholly-owned subsidiary of such limited liability company or of a company which complies with section 114(1) of the Companies Act 1981;
- (b) it is a limited liability company mentioned in an order made by the Minister under section 11(7);
- (c) it is licensed under section 13 and, at the relevant time is carrying on such business in accordance with the terms and conditions imposed in such licence, and not otherwise;
- (d) it is a wholly-owned subsidiary of a limited liability company referred to in paragraph (b) or of a company licensed under section 13 carrying on such business in accordance with the terms and conditions imposed in such licence; or
- (e) it is a limited liability company the LLC interests of which are, at the relevant time, listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry, or is a wholly-owned subsidiary of such a limited liability company or of a company the

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LLC interests or shares in which are, listed on a designated stock exchange and engaged as a business in a material way in a prescribed industry.

(2) Section 18 shall not apply to a limited liability company referred to in subsection (1)(d).

(3) Any local LLC that carries on business in contravention of subsection (1) shall be liable to a default fine of \$100 in respect of each day that it carries on business in contravention of the subsection.

Provisions to be complied with by a local LLC carrying on business in Bermuda

11 (1) The limited liability company shall be controlled by Bermudians.

(2) Without prejudice to the generality of subsection (1), at least 60 percent of the total voting rights in the limited liability company shall be exercisable by Bermudians.

(3) The percentage—

(a) of Bermudian managers; and

(b) of value of LLC interests beneficially owned by Bermudians,

in the limited liability company shall not be less than 60 percent in each case, provided that the limited liability company shall not be deemed to be in breach of this subsection in so far as, and so long as, it is acting in accordance with subsection (4).

(4) The limited liability company shall act in accordance with this subsection if the percentage of value of LLC interests beneficially owned by Bermudians or the percentage of voting rights exercisable by Bermudians falls below 60 percent by virtue of factors which are beyond its control and it gives notice in writing to the person who is not Bermudian and whose ownership of LLC interests or voting rights results in the percentage so falling, as soon as the managers become aware of that fact, that—

(a) he must divest himself of those LLC interests as soon as may be and, in any event, not later than three years from the date upon which he receives the notice; and

(b) he must divest himself of such voting rights in the LLC as soon as may be and, in any event, not later than three years from the date upon which he receives the notice; and

(c) he must not exercise any such voting rights in the LLC from the date upon which he receives the notice.

(5) The Minister may in any particular case, for good cause, extend the period of three years for a further period not exceeding one year.

(6) For the purposes of subsection (4), the managers of a limited liability company shall be deemed to become aware that the percentage of value of LLC interests beneficially owned by Bermudians or voting rights exercisable by Bermudians in their limited liability company is less than the percentage specified in subsections (2) and (3), three days after the day upon which any manager of a limited liability company would, if acting with due diligence, have become aware of that fact.

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(7) The Minister may if he considers appropriate by order subject to the negative resolution procedure exempt a limited liability company from the requirements of this section.

(8) The Minister may by regulations amend the requirement under this section, and any such regulations shall be subject to affirmative resolution procedure.

Application for licence

12 (1) Any local LLC may apply to the Minister for a licence to carry on business in Bermuda.

(2) An application for a licence under this section shall be made to the Minister in such form and accompanied by such documents as the Minister may determine.

(3) Before an application is made, the local LLC shall not less than seven days prior to the date of application advertise its intention to apply for a licence under this section in an appointed newspaper.

Granting and revocation of licence

13 (1) Subject to the provisions of this section, the Minister may, in his discretion, grant a licence in respect of which application has been made under section 12, but if the Minister is of opinion that it would not be in the public interest to licence a local LLC, he may refuse to licence one without giving any reason for so refusing.

(2) A licence issued under this section shall be for such duration and may be subject to such terms and conditions as the Minister may see fit to specify therein.

(3) The Minister shall, in deciding whether or not to grant a licence to a limited liability company to carry on business in Bermuda, have regard to—

- (a) the economic situation in Bermuda and the protection of persons already engaged in business in Bermuda;
- (b) the nature and previous conduct of the limited liability company and the persons having an interest in the limited liability company whether as managers, members or otherwise;
- (c) any advantage or disadvantage which may result from the limited liability company carrying on business in Bermuda; and
- (d) the desirability of retaining in the control of Bermudians the economic resources of Bermuda.

(4) The Minister may at any time revoke a licence of a local LLC—

- (a) for a contravention of any condition subject to which the licence is granted;
- (b) if the limited liability company concerned is carrying on business in a manner detrimental to the public interest;
- (c) if the limited liability company concerned ceases to carry on business in Bermuda;

- (d) if the limited liability company concerned goes into liquidation or is wound up or otherwise dissolved; or
 - (e) if the limited liability company concerned fails to comply with any directive or requirement issued by the Minister under this Act.
- (5) Before revoking a licence under subsection (4) the Minister shall—
- (a) give the limited liability company concerned notice in writing of his intention to do so specifying therein the grounds on which he proposes to revoke the licence; and
 - (b) afford the limited liability company concerned an opportunity of submitting to him a written statement of objections to the revocation of the licence; and thereafter the Minister shall advise the limited liability company concerned of his decision in the matter.
- (6) The Minister shall lodge with the Registrar a copy of every licence granted under this section and the licence shall be available for public inspection by members of the public at the office of the Registrar during normal business hours and by electronic means at times determined by the Registrar.

Fees payable by licensed local LLC

- 14 (1) Every local LLC formed under this Act to which a licence is granted under section 13 shall, upon the issue of such licence, pay to the Government the fee of \$1,000.
- (2) On or before 31 March of every year after the year in which a licence has been granted to a local LLC, that local LLC shall, during the subsistence of such licence, pay to the Government a fee of \$1,000.
- (3) Any licensed local LLC which fails to pay the fee provided by this section commits an offence and is liable on summary conviction to a fine not exceeding \$100 for each month during which such fee remains unpaid.
- (4) The Minister shall publish annually in the gazette the name of every licensed local LLC that has paid the fee provided by this section.

Special provisions relating to hotel LLCs

- 15 (1) In relation to a hotel LLC the Minister shall exercise his powers under section 13 after consultation with the Minister responsible for tourism.
- (2) Notwithstanding any provision of a private Act restricting the assignment of LLC interests in any hotel LLC, the Minister may, without prejudice to his powers under section 13(2), impose conditions on the grant of a licence to a hotel LLC restricting the assignment of LLC interests in the limited liability company without the consent of such authority as the Minister may specify.
- (3) Where a hotel LLC is a subsidiary of a corporation incorporated outside Bermuda, the Minister may, without prejudice to his powers under section 13, revoke a licence in the event of the transfer of effective control of the corporation to persons who are not Bermudians.

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(4) The provisions of subsection (5) of section 13 shall apply to the revocation of a licence under subsection (3) as they apply to the revocation of a licence under subsection (4) of that section.

(5) In this section—

“hotel” has the meaning assigned to that expression in section 1 of the Hotels (Licensing and Control) Act 1969;

“hotel LLC” means a limited liability company whose principal business in Bermuda is the ownership or the operation of a hotel in Bermuda.

Penalty for improper exercise of voting rights etc.

16 (1) Any person who, after a notice has been served upon him under section 11(4), exercises any voting rights or fails to divest himself of his LLC interests within three years, or within such further period as the Minister may allow under the proviso to that subsection, shall be liable on summary conviction to a fine of \$1,000.

(2) A court when convicting any person under subsection (1) of failing to divest himself of any LLC interests shall, if the person convicted still holds the LLC interests, fix a date by which he shall divest himself of the LLC interests.

(3) If the person convicted fails so to do by such date, he commits a further offence and shall be liable on summary conviction to a fine of \$100 for each day he has held the LLC interests since the date the court ordered him to divest himself of them.

(4) If any person fails to divest himself of any LLC interests after having been found guilty of a further offence under subsection (3) he shall be guilty of contempt of court and the court may summarily deal with him for such contempt until such time as he does divest himself of the LLC interests.

(5) It shall be a good defence to a prosecution under subsection (1) for the owner to show that the limited liability company had at the relevant time ceased to carry on business in Bermuda or that the LLC interests were valueless and that he was, therefore, unable to divest himself of them.

Return of holdings of LLC interests

17 (1) Before any local LLC first commences business, the limited liability company shall forward to the Registrar a return of holdings of LLC interests in the limited liability company as at the date of making the return signed by a manager of the limited liability company.

(2) Every local LLC shall, not later than 31 March each year after the year in which the limited liability company first commenced business, forward to the Registrar a return of holdings of LLC interests in the limited liability company as at 31 December of the immediately preceding year signed by a manager.

(3) The Registrar may, in any particular case, grant an extension of time for compliance with this subsection if he is satisfied that non-compliance is not wilful or is due to circumstances beyond the control of the manager of the limited liability company.

- (4) A return of holdings of LLC interests under this section—
- (a) shall contain the following particulars—
 - (i) the value of each class of LLC interests issued by the limited liability company;
 - (ii) the voting and other rights attached to each class of LLC interests;
 - (iii) a statement of the value of each class of LLC interests beneficially owned by Bermudians; and
 - (iv) a statement of the value of each class of LLC interests held by other persons;
 - (b) may be combined with a return made for the purpose of the payment of the annual fee pursuant to section 253.
- (5) Any local LLC which fails to comply with the provisions of this section shall be liable to a default fine.
- (6) Any person who knowingly signs a return made for the purposes of this section which is false in a material particular shall be liable—
- (a) on conviction by a court of summary jurisdiction, to a fine of \$1,000; and
 - (b) on conviction on indictment, to a fine of \$2,000.

Issuance and assignment of LLC interests

18 (1) No issuance of LLC interests in a local LLC shall be made by the managers of the local LLC if such issuance will, to the knowledge or belief of any of the managers, result in the percentage of value of the LLC interests beneficially owned by persons who are not Bermudians exceeding the amount such persons are entitled to own by virtue of this Act unless the prior written consent of the Minister is obtained.

(2) The managers of a local LLC shall decline to register any assignment of LLC interests in the limited liability company if such assignment will, to the knowledge or belief of any of the managers, result in the percentage of value of the LLC interests beneficially owned or voting rights held by persons who are not Bermudian exceeding the amount such persons are entitled to own by virtue of this Act unless the prior written consent of the Minister is obtained.

(3) No issuance of LLC interests in a local LLC shall be made to any person unless the application for those LLC interests sets out whether or not the applicant is Bermudian.

(4) No assignment of LLC interests in a local LLC shall be registered unless the instrument of assignment, if any, in respect of those LLC interests sets out with respect to both the assignor and assignee whether or not they are Bermudian.

- (5) Any manager of a local LLC who is knowingly a party to—
- (a) any issuance of LLC interests contrary to subsection (1) or subsection (3);
or

(b) authorising or permitting any assignment, or registration of an assignment, of LLC interests contrary to subsection (2) or subsection (4), commits an offence and is liable on summary conviction to a fine of \$1,000 and on conviction on indictment to a fine of \$2,000.

(6) In any case where it is stated in an application for issuance of, or in an instrument of assignment in respect of, LLC interests in a local LLC that an applicant, assignor or assignee is Bermudian the managers of the LLC may request that person to furnish such proof of the correctness of such statement as the managers consider necessary; and, in the absence of such proof, the managers may decline to issue any LLC interests or register the assignment.

(7) The members or managers of such LLC may at any time enquire in writing of any person who owns an LLC interest in the limited liability company—

- (a) whether or not he is Bermudian;
- (b) whether or not he is the beneficial owner of the LLC interest;
- (c) whether or not he is in any way under any obligation to exercise any right attaching to that LLC interest at the instance of, or for the benefit of, another person and, if so, the name of that other person and whether or not that other person is Bermudian; and
- (d) whether he owns that LLC interest jointly or severally with another person and, if so, the name of the other person who has such an interest and whether or not that other person is Bermudian,

and, if it is stated in any reply made to an enquiry under this subsection that any person is Bermudian, the members or the managers may further require the person making that statement to furnish such proof of the correctness of that statement.

(8) This section does not apply to a local LLC that is licensed under this Act.

(9) Any person who fails to reply in accordance with subsection (2) or subsection (3) or who makes a reply or furnishes information or purported proof which is false in a material particular is liable on summary conviction to a fine of \$1,000 and on conviction on indictment to a fine of \$2,000.

Minister may require information

19 (1) The Minister may at any time by notice in writing require the managers of a local LLC to forward to him such information as to the managers of and holdings of LLC interests (including the classes of LLC interests and the voting and other rights attached to each class) in the local LLC as the Minister may specify.

(2) A notice under subsection (1) may require that the managers set out in writing within such period as may be specified in the notice the facts in relation to the managers, holdings of LLC interests and other matters relating to the control of the limited liability company which the managers contend establishes that the local LLC is Bermudian controlled and such facts shall specify the extent to which the control of any corporate body holding LLC interests in the local LLC is vested in Bermudians.

(3) If the managers of a local LLC fail to comply with the requirements specified in a notice issued under this section, or fail to comply with the requirements thereof in such a manner as to establish, prima facie, that the limited liability company is Bermudian controlled, the limited liability company shall be deemed not to be Bermudian controlled until the contrary is proved.

Acquisition of land by local LLCs

20 (1) No local LLC shall carry on any restricted business activity relating to corporate land holding as set out in paragraph (c) of the Ninth Schedule to the Companies Act 1981 without the consent of the Minister under sections 4A and 4AA of that Act, which consent shall be given subject to the provisions of those sections; and those section shall apply with respect to a local LLC with the necessary modifications.

(2) Subject to subsection (3), where a local LLC holds an unlimited trust licence issued under the Trusts (Regulation of Trust Business) Act 2001, the limited liability company shall have the power to acquire and hold in its name any land in Bermuda provided it holds such land in its capacity as trustee of any trust or settlement established by written instrument.

(3) Nothing in this section overrides any provision in Part VII of the Bermuda Immigration and Protection Act 1956 relating to the acquisition or the holding of land.

(4) A local LLC may—

- (a) without requiring consent of the Minister take land in Bermuda by way of lease or letting agreement for a term not exceeding 50 years, being land bona fide required for the purposes of the business of the limited liability company; and
- (b) with the consent of the Minister, take land in Bermuda by way of lease or letting agreement for a term not exceeding 21 years in order to provide accommodation or recreational facilities for its managers, officers and employees.

(5) A local LLC that has a physical presence in Bermuda may, with the previous sanction in each case of the Minister but not otherwise, take by way of lease or letting agreement for a term not exceeding 131 years, or such longer period as is provided for in a hotel concession order made under the Hotels Concession Act 2000, land in Bermuda that is designated as tourist accommodation or a hotel residence by regulations made under section 92A(1)(b) of the Bermuda Immigration and Protection Act 1956, provided that it does not exceed in the whole the limit of the limited liability company's land-holding powers specified in its certificate of formation.

(6) For the purpose of subsection (5), a local LLC has a physical presence in Bermuda if it operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner.

PART 3
EXEMPTED LLCS

Meaning of exempted LLC

21 For the purposes of this Act, an exempted LLC means a limited liability company which does not comply with the requirements of this Act in respect of a local LLC and which is a limited liability company formed and continued under this Act and stated in its certificate of formation to be an exempted LLC.

Exempted LLC to be an exempted undertaking

22 (1) An exempted LLC shall be an exempted undertaking for the purposes of the Exempted Undertakings Tax Protection Act 1966.

(2) An exempted LLC shall be subject to the provisions of this Act and to the provisions of law save where otherwise expressly provided in this or any other Act.

Denomination of LLC interests of exempted LLCS

23 Notwithstanding the provisions of the Bermuda Monetary Authority Act 1969, the LLC interests of an exempted LLC may be denominated in such currency as the limited liability company thinks expedient.

Restrictions on carrying on business etc.

24 (1) An exempted LLC shall not—

- (a) acquire or hold land in Bermuda except land required for its business held by way of lease or tenancy agreement for a term not exceeding 50 years;
- (b) take any mortgage of land in Bermuda without the prior written consent of the Minister;
- (c) acquire any bonds or debentures secured on any land in Bermuda except bonds or debentures issued by the Government or a public authority; or
- (d) carry on business of any kind or type whatsoever in Bermuda either alone or in partnership or otherwise, except—
 - (i) carrying on business in Bermuda with persons outside Bermuda;
 - (ii) doing business in Bermuda with an exempted undertaking in furtherance only of the business of the exempted LLC carried on outside Bermuda;
 - (iii) buying or selling or otherwise dealing in shares, bonds, debenture stock obligations, mortgages, interests or other securities or investments issued or created by an exempted undertaking or a local company, or any partnership which is not an exempted undertaking;
 - (iv) effecting or concluding contracts in Bermuda, and exercising in Bermuda all other powers, so far as may be necessary for the carrying on of its business with persons outside Bermuda;

- (v) acting as manager or agent for, or consultant or adviser to, the business of an exempted undertaking whether or not such business is the sole business of the exempted LLC; and
 - (vi) in accordance with subsection (8)—
 - (A) marketing of shares or dealing with holders of the shares of an exempted company where the exempted company is a mutual fund;
 - (B) marketing interests in or dealing with holders of interests in a limited partnership or limited liability company in respect of which the limited liability company is a general partner, manager or member, as the case may be; and
 - (C) marketing units in or dealing with holders of units in a unit trust scheme in respect of which the limited liability company is a manager.
- (2) Nothing in subsection (1)(d) shall be taken to prohibit an exempted LLC from effecting or concluding contracts or arrangements with persons in Bermuda for the supply of goods and services to the limited liability company necessary for the purpose of enabling the exempted LLC to carry on its business with persons outside Bermuda.
- (3) Nothing in subsection (1)(d) shall prohibit an exempted LLC from offering and providing goods or services electronically from a place of business in Bermuda or through an internet or other electronic service provider located in Bermuda, in accordance with the Electronic Transactions Act 1999.
- (4) An exempted LLC shall not engage in, or carry on the business of, conveying or arranging for the conveyance of passengers, goods or mail by ship whether such conveyance is within or outside the waters of Bermuda or partly within and partly outside those waters, except—
- (a) where the ship is owned, operated or chartered by or on behalf of the exempted LLC;
 - (b) where the conveyance is of a passenger employed by the exempted LLC or of goods which are or are to become the property of the exempted LLC; or
 - (c) when the business is negotiated by a local company.
- (5) Notwithstanding anything in this Act, an exempted LLC shall not engage in retail trade in Bermuda, including retail trade with another exempted undertaking or any other person.
- (6) If an exempted LLC does anything in contravention of the provisions of subsections (1), (4) and (5), then the land, merchandise, securities, property or other interests so acquired or disposed of, taken or held, will be liable to escheat under the Escheats Act 1871 or under any other Act relating to escheat.
- (7) It is hereby declared that in any proceedings for escheat under subsection (6), the question whether any land, merchandise, securities, property or other interests have

been taken, acquired, disposed of or held in contravention of the provisions of subsection (1), shall be decided as a question of fact.

(8) For the purposes of subsection (1)(d)(vi), an exempted LLC shall be deemed to be marketing or dealing with holders of shares, partnership interests, LLC interests or units if it undertakes any of the following activities in Bermuda—

- (a) the offering of such shares, partnership interests, LLC interests or units for subscription or purchase by way of a prospectus or otherwise;
- (b) the acceptance of subscriptions for, or of offers to purchase, or of applications to redeem, such shares, partnership interests, LLC interests or units;
- (c) the distribution of company, limited partnership, limited liability company or trust information to holders of shares, partnership interests, LLC interests or units in respect thereof;
- (d) making it known, by way of advertisement or otherwise, that it may be contacted at an address in Bermuda for the purpose of communicating with holders of such shares, partnership interests, LLC interests or units or the distribution and collection of information from or to holders of such shares, limited partnership interests, LLC interests or units; and
- (e) conducting any other dealing with the holders of such shares, partnership interests, LLC interests or units with respect to any such shares, partnership interests, LLC interests or units held by them.

Circumstances in which an exempted LLC may carry on business in Bermuda

25 (1) Except as provided in subsection (11), no exempted LLC shall carry on business in Bermuda unless the Minister, subject to section 24, on application made by the exempted LLC in such form as the Minister may determine, grants a licence to the exempted LLC empowering it so to do or to carry on in Bermuda a business or an activity prohibited by subsections (1) and (4) of section 24.

(2) The exempted LLC shall, not less than seven days prior to an application for a licence under subsection (1), advertise its intention to apply for a licence under this section in an appointed newspaper.

(3) A licence issued under subsection (1) shall be for such duration and may be subject to such terms and conditions as the Minister may see fit to specify therein.

(4) The Minister shall, in deciding whether or not to grant a licence to an exempted LLC to carry on business in Bermuda, have regard to—

- (a) the economic situation in Bermuda and the protection of persons already engaged in business in Bermuda;
- (b) the nature and previous conduct of the exempted LLC and the persons having an interest in the exempted LLC;

- (c) any advantage or disadvantage which may result from the exempted LLC carrying on business in Bermuda; and
 - (d) the desirability of retaining in the control of Bermudians the economic resources of Bermuda.
- (5) The Minister may at any time revoke a licence—
- (a) for a contravention of any condition subject to which the licence is granted;
 - (b) if the exempted LLC concerned is carrying on business in a manner detrimental to the public interest;
 - (c) if the exempted LLC concerned ceases to carry on business in Bermuda;
 - (d) if the exempted LLC concerned is dissolved; or
 - (e) if the exempted LLC concerned fails to comply with any directive or requirement issued by the Minister under this Act.
- (6) Before revoking a licence under subsection (5) the Minister shall give the exempted LLC concerned notice in writing of his intention to do so specifying therein the grounds on which he proposes to revoke the licence and shall afford the exempted LLC concerned an opportunity of submitting to him a written statement of objections to the revocation of the licence; and thereafter the Minister shall advise the exempted LLC concerned of his decision in the matter.
- (7) Every exempted LLC to which a licence is granted under this Act shall—
- (a) upon the issue of the licence, pay a licensing fee of \$1,000; and
 - (b) during the subsistence of such licence, on or before 31 January of every year, pay an annual fee of \$1,000.
- (8) Any licensed exempted LLC which fails to pay the fee provided by this section commits an offence and is liable on summary conviction to a fine not exceeding \$100 for each month during which such fee remains unpaid.
- (9) An exempted LLC shall not require a licence to carry on in Bermuda a business or activity specified as an exception in section 24(1)(a) to 24(1)(d).
- (10) The Minister shall lodge with the Registrar a copy of every licence granted under this section and the licence shall be available for inspection by members of the public at the office of the Registrar during normal business hours and by electronic means at times determined by the Registrar.
- (11) An exempted LLC which contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$500 for each day the offence continues or on conviction on indictment to a fine not exceeding \$1,500 for each day the offence continues.

Registered office; resident representative for exempted LLCs

- 26 (1) An exempted LLC shall at all times have a registered office in Bermuda, which shall not be a post office box, to which all communications and notices may be addressed.

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(2) On formation, the address of the exempted LLC's registered office is that specified in its certificate of formation filed with the Registrar under section 30.

(3) The exempted LLC may change the address of its registered office from time to time by amendment of the certificate of formation in accordance with section 32.

(4) A document may be served on the exempted LLC by leaving it at the registered office of the limited liability company.

(5) Every exempted LLC which does not have its registered office at the registered office of a Licensed Corporate Service Provider shall have a resident representative that is—

- (a) an individual who is ordinarily resident in Bermuda; or
- (b) a company which is ordinarily resident in Bermuda.

(6) A resident representative shall—

- (a) be entitled to attend, to be heard at and to receive minutes of proceedings of, all meetings of the exempted LLC;
- (b) upon giving notice to the exempted LLC of an address for the purposes of receipt of notices, be entitled to receive notice of any meeting of the limited liability company, but accidental omission to give such notice shall not invalidate any action taken at any such meetings;
- (c) act as agent for the service of process in Bermuda; and
- (d) if authorised by the exempted LLC, be entitled to file all documents and make all applications required or permitted by this Act.

(7) It shall be the duty of the resident representative in any circumstances where the resident representative becomes aware that—

- (a) the exempted LLC has committed a breach of any provision of this Act or any regulation made hereunder which will have a material effect on the affairs of the limited liability company; or
- (b) any admission of a new member or assignment of an LLC interest of the exempted LLC has been effected in contravention of any other statute regulating the same,

to make a written report to the Registrar within 30 days of becoming so aware and the report shall contain all relevant particulars unless before such report is made the exempted LLC has remedied such breach or contravention.

(8) The resident representative shall maintain at its office in Bermuda originals or copies of all financial statements required to be prepared by the exempted LLC under this Act together with the auditor's report thereon, and all records of account required by section 50 to be kept in Bermuda.

(9) The duty of the resident representative under subsection (7) shall be owed to the Registrar and no resident representative shall be liable to the exempted LLC or any other

person for any report made by the resident representative pursuant to subsection (8) or any failure or purported failure to make any report under that subsection.

(10) Wilful failure by the resident representative to comply with any of the provisions of this section shall be an offence and shall render the resident representative liable on summary conviction to a fine not exceeding \$5,000.

(11) Subsections (1) to (4) of this section shall apply, with the necessary modifications, to local LLCs formed under this Act.

Investigation of affairs of exempted LLC; duties of inspections

27 (1) The Minister may at any time appoint one or more inspectors to investigate the affairs of an exempted LLC and to report on them in such manner as the Minister may direct.

(2) All expenses of and incidental to the investigation shall be defrayed by the exempted LLC unless the Minister otherwise directs.

(3) Every member, manager, officer, agent or employee of the exempted LLC shall produce to the inspector such books or documents as the inspector may require for the purpose of his investigation.

(4) Any manager, officer, agent or employee of the exempted LLC who, in the course of an investigation of the affairs of the LLC—

- (a) refuses to produce any book or document required by the inspector to be produced; or
- (b) refuses to answer any question relating to the affairs of the LLC,

shall be liable to a default fine of \$100.

(5) The inspector may take evidence upon oath in investigating the affairs of the exempted LLC, and for that purpose may administer an oath or affirmation.

(6) Any investigation under this section shall be held in private unless the exempted LLC requests that it be held in public.

(7) The inspector may from time to time report to the Minister and shall on the completion of his investigation report to him and shall send copies of such reports to the exempted LLC and no other person shall be informed of the nature or contents of the report save at the request of the exempted LLC or on the direction of the Minister.

(8) If the Minister considers, after examining any such report that the exempted LLC or any or its members, managers, officers, agents or employees—

- (a) have knowingly and wilfully done anything in contravention of this Act or of any licence, registration or permission granted under this Act, he may direct the Registrar to petition the Court for the winding up of the exempted LLC;
- (b) are carrying on its affairs in a manner detrimental to the interests of the members of the exempted LLC or the creditors of the exempted LLC he may

require the exempted LLC to take such measures as he may consider necessary in relation to its affairs.

(9) A copy of any petition referred to in subsection (8) shall be served on the exempted LLC at least seven clear days before the day set by the Court for the hearing of the petition.

(10) If the Court, on the hearing of any such petition, is satisfied that the exempted LLC or any of its members, managers, officers, agents or employees have done anything in contravention of the provisions of this Act or of any licence, registration or permission granted under this Act, the Court may—

- (a) make an order for the winding up of the exempted LLC; or
- (b) impose a fine of \$2,000 on the exempted LLC; or
- (c) impose a like fine on any member, manager, officer, agent or employee of the exempted LLC who has knowingly and wilfully authorised or permitted any such contravention.

(11) Where the Court makes an order for the winding up of an exempted LLC under subsection (10) the LLC shall be wound up in the same manner and with the same procedure as if the circumstances leading to the order were circumstances referred to in section 108.

(12) Any proceedings in connection with the holding of an investigation by the inspector in pursuance of the provisions of this section shall, for the purposes of those provisions of the Criminal Code relating to perjury, be deemed to be judicial proceedings.

(13) Whenever the Minister appoints an inspector or inspectors by virtue of subsection (1), the Registrar may make an application to the Court under section 28 for an order that the assets books and papers of the exempted LLC be preserved and not moved, modified, destroyed or deleted and this section shall apply to such application *mutatis mutandis*.

Preservation of the books and assets of an exempted LLC

28 (1) The Registrar, where he has made an application under 27 may apply to the Court *ex parte* for an order that the assets, books and papers of the exempted LLC be preserved and not moved, modified, destroyed or deleted.

(2) If on any such application the Court is satisfied that there is a likelihood that the assets of the exempted LLC will be transferred or that the books and papers of the exempted LLC may be moved, modified, destroyed or deleted it shall make an order that the assets of the exempted LLC shall not be transferred to any other person, removed from Bermuda or otherwise dealt with and that the books and papers of the exempted LLC shall not be moved, modified, destroyed or deleted until a further order is made by the Court.

(3) Where an order under subsection (1) is served on an exempted LLC, the LLC may apply to the Court for the order to be discharged and the Court may—

- (a) confirm the order;

- (b) vary the order in such manner as it considers just; or
- (c) discharge the order,

and in any case make such orders as it thinks desirable for the preservation of the assets of the exempted LLC and the custody, inspection and copying of the books and papers of the LLC.

(4) The exempted LLC and any member, manager, officer or employee of the LLC who acts in contravention of an order of the Court made under subsection (2) or (3) shall be guilty of contempt of Court.

PART 4

FORMATION CERTIFICATE OF FORMATION

Mode of forming a limited liability company

29 (1) Subject to this Act, any one or more persons may form a limited liability company for any lawful business, purpose or activity.

(2) A limited liability company may be formed by executing and filing a certificate of formation in accordance with this Part and otherwise complying with the requirements of this Act.

Certificate of formation

30 (1) The certificate of formation shall be filed with the Registrar and shall set forth—

- (a) the name of the limited liability company and, if applicable, its secondary name;
- (b) whether the limited liability company is a local LLC or an exempted LLC;
- (c) the address of the registered office of the limited liability company; and
- (d) any other matters the members determine to include.

(2) The filing of a certificate of formation shall be accompanied by the Authority's consent to the formation of the limited liability company, the application for which consent shall be in such form and accompanied by such documents as the Authority may require, except that the consent of the Authority shall not be required where the person or persons seeking to form the limited liability company have engaged the services of a Licensed Corporate Service Provider.

(3) Upon the satisfactory filing of a certificate of formation —

- (a) the Registrar shall, subject to section 33(5), issue a certificate of filing; and
- (b) the limited liability company shall be deemed formed as at the time of the filing of the initial certificate of formation with the Registrar or at any later date or time (which shall be a date or time certain) specified in the

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certificate of formation if, in either case, there has been compliance with the requirements of this section.

(4) Where the Authority refuses consent to the formation of a limited liability company pursuant to subsection (2), the Authority shall not be bound to give any reason for such refusal and that refusal shall not be subject to appeal or review in any court.

(5) Prior to the filing of a certificate of formation, an authorised person shall reserve the name of the limited liability company in accordance with section 7(2).

(6) A limited liability company formed under this Act shall—

(a) be a separate legal entity, the existence of which as a separate legal entity shall continue until the limited liability company is dissolved, and the limited liability company shall not be dissolved by reason only that the limited liability company has no members; and

(b) subject to the LLC agreement have the capacity, rights, powers and privileges of a natural person.

(7) No defect in the formalities leading up to the formation of a limited liability company shall affect the validity of its formation and a certificate of filing of the certificate of formation shall be conclusive evidence of the due formation of the limited liability company and the date of its formation.

Register of limited liability companies

31 (1) The Registrar shall keep and maintain a register of limited liability companies in such form as he shall determine.

(2) The register shall include the name of the limited liability company and, if applicable, its secondary name in the register.

Amendment to certificate of formation

32 (1) A certificate of formation may be amended by filing a certificate of amendment thereto with the Registrar.

(2) The certificate of amendment shall set forth—

(a) the name of the limited liability company and, if applicable, its secondary name; and

(b) the amendment to the certificate of formation.

(3) The Registrar, on receiving a certificate of amendment changing a limited liability company's name and, in the case of a limited liability company adopting a secondary name or changing its secondary name, receiving the certified translation and copy of the text referred to in section 8(1), provided the new name has been reserved in accordance with section 7(2), shall enter the new name and, if applicable, the new secondary name on the register in place of the former name or names.

(4) Unless otherwise provided in this Act or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Registrar.

Cancellation of certificate of formation

33 A certificate of formation shall be cancelled—

- (a) upon the dissolution of the limited liability company;
- (b) on the effective date or time of the amalgamation of the limited liability company;
- (c) on the effective date or time of the merger of the limited liability company;
- (d) on the effective date or time of the discontinuance of the limited liability company; or
- (e) on the effective date or time of the conversion of the limited liability company into a company or an exempted limited partnership.

Execution

34 (1) Each certificate and notice required by this Act to be filed with the Registrar shall be executed by one or more authorised persons.

(2) Unless otherwise provided in a LLC agreement, any person may sign any certificate or amendment thereof or enter into a LLC agreement or amendment thereof by an agent, including an attorney-in-fact.

(3) The execution of a certificate by an authorised person constitutes an oath or affirmation that, to the best of such person's knowledge and belief, the facts stated therein are true.

Execution by Court order

35 (1) Where a person required to execute—

- (a) a certificate required by this Act fails or refuses to do so; or
- (b) an LLC agreement or amendment thereof fails or refuses to do so,

any other person who is adversely affected by the failure or refusal may petition the Court to direct the execution of the certificate, the LLC agreement or amendment thereof.

(2) If the Court finds that—

- (a) the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate; or
- (b) the LLC agreement or amendment thereof should be executed and that any person required to execute the LLC agreement or amendment thereof has failed or refused to do so,

it shall make an order granting appropriate relief.

Filing

- 36 (1) A limited liability company shall file with the Registrar—
- (a) the signed certificate of formation and any certificates of amendment or correction;
 - (b) any amendment of a certificate with a future effective date or time;
 - (c) any cancellation of a certificate with a future effective date or time;
 - (d) any certificate of merger or amalgamation;
 - (e) any restated certificate;
 - (f) any corrected certificate;
 - (g) any certificate of continuance; and
 - (h) any certificate of conversion.
- (2) A person who executes a certificate as an agent need not exhibit evidence of that person's authority as a prerequisite to filing.
- (3) Any signature on any certificate authorised to be filed with the Registrar under any provision of this Act may be a facsimile, a conformed signature or an electronically transmitted signature.
- (4) A fee required in respect of any certificate filed under this Act shall be paid at the time of the filing.
- (5) Subject to the provisions of this Act, upon filing of any certificate in accordance with this section, the Registrar shall issue a certificate of filing to which shall be attached a facsimile of such filed certificate.
- (6) The fact that any certificate is on file in the office of the Registrar is notice of all matters set forth therein which are required or permitted to be set forth in such certificate in accordance with this Act.

Effective date of filing

- 37 (1) Notwithstanding any other provision of this Act, any certificate filed under this Act shall be effective at the time of its filing with the Registrar or at any later date or time (not later than a time on the ninetieth day after the date of its filing) specified in the certificate or in this section.
- (2) Upon the filing with the Registrar of a certificate of —
- (a) amendment (or court order in respect thereof), certificate of correction, corrected certificate or restated certificate, or upon the future effective date or time of a certificate of amendment (or court order in respect thereof), certificate of correction, corrected certificate or restated certificate, as provided for therein, the certificate of formation shall be amended, corrected or restated as set forth therein;

- (b) continuance or upon the future effective date or time of a certificate of continuance, the entity filing the certificate of continuance is continued as a limited liability company with the effect provided in section 96;
 - (c) conversion of company registered under the Companies Act 1981 to limited liability company or upon the future effective date or time of a certificate of conversion of exempted company to limited liability company, the company filing the certificate of conversion of company to limited liability company is converted to and continued as a limited liability company with the effect provided in section 101; or
 - (d) conversion of exempted limited partnership to exempted LLC or upon the future effective date or time of a certificate of conversion of exempted limited partnership to exempted LLC, the exempted limited partnership filing the certificate of conversion of exempted limited partnership to exempted LLC is converted to and continued as an exempted LLC with the effect provided in section 103.
- (3) If—
- (a) any certificate filed in accordance with this Act provides for a future effective date or time; and
 - (b) prior to such future effective date or time set forth in such certificate, the transaction is terminated or its terms are amended to change the future effective date or time or any other matter described in such certificate so as to make such certificate false or inaccurate in any respect,

such certificate shall, prior to the future effective date or time set forth in such certificate, be terminated or amended by the filing of a certificate of termination or certificate of amendment of such certificate, executed in accordance with section 34, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended.

- (4) Upon the filing with the Registrar of a certificate of—
- (a) amendment of a certificate with a future effective date or time, the amendment of the certificate identified in such certificate of amendment shall be amended with effect from such date or time; and
 - (b) termination of a certificate with a future effective date or time, the certificate identified in such certificate of termination shall be terminated with effect from such date or time.

Restated certificate

38 (1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having been filed with the Registrar one or more certificates or other instruments pursuant to any of the sections referred to in this Act, and the limited liability company may at the same time also further amend its certificate of formation, by adopting a restated certificate of formation .

- (2) If a restated certificate of formation—
- (a) merely restates and integrates but does not further amend the certificate of formation, as amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this Act, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorised person and filed with the Registrar as provided in section 36; or
 - (b) restates and integrates and also further amends in any respect the certificate of Formation, as amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorised person and filed with the Registrar as provided in section 36.
- (3) A restated certificate of formation shall include—
- (a) the limited liability company's present name and, if applicable, its secondary name, and, if it has been changed, the name under which it was originally filed; and
 - (b) the date of filing with the Registrar of its original certificate of formation, and the future effective date or time (which shall be a date or time certain) of the restated certificate if it is not to be effective upon the filing of the restated certificate.
- (4) Upon the filing with the Registrar of a restated certificate of formation, or upon the future effective date or time of a restated certificate of formation as provided for therein, the certificate of formation shall be superseded; thereafter, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.
- (5) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this Act, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

Certificate of correction

39 (1) Whenever any certificate required to be filed with the office of the Registrar under any provision of this Act has been so filed and is an inaccurate record of the action referred to in the certificate, or was defectively or erroneously executed, such certificate may be corrected by filing with the office of the Registrar a certificate of correction of such certificate.

(2) The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form, and shall be executed and filed as required by this Act.

(3) In lieu of filing a certificate of correction, a certificate may be corrected by filing with the Registrar a corrected certificate which shall be executed and filed as if the corrected certificate were the certificate being corrected, and a fee equal to the fee payable to the Registrar if the certificate being corrected were then being filed shall be paid and collected by the Registrar.

(4) The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form.

(5) A certificate corrected in accordance with this section shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate as corrected shall be effective from the filing date.

PART 5

CONTRIBUTION AND LIABILITY OF MEMBERS

Form of contribution

40 The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Liability for contribution

41 (1) Except as provided in an LLC agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason.

(2) If a member does not make the required contribution of property or services as provided in subsection (1), the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company) of the contribution that has not been made.

(3) The option referred to in subsection (2), shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the LLC agreement or applicable law.

(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 Act may be compromised only by consent of all the members.

(5) Notwithstanding the compromise referred to in subsection (4), a creditor of a limited liability company who extends credit, after the entering into of an LLC agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, 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 money or other property.

(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 such member; and the conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(7) An LLC agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure and such penalty or consequence may take the form of—

- (a) reducing or eliminating the defaulting member's proportionate interest in a limited liability company;
- (b) subordinating the defaulting member's LLC interest to that of non-defaulting members;
- (c) a forced sale of some or all of the defaulting member's LLC interest;
- (d) a power of forfeiture of some or all of the defaulting member's LLC interest;
- (e) the lending by other members of the amount necessary to meet the defaulting member's commitment;
- (f) a fixing of the value of the defaulting member's LLC interest by appraisal or by formula and redemption or sale of the defaulting member's LLC interest at such value; or
- (g) other penalty or consequence.

Allocation of profits and losses

42 (1) The profits and losses of a limited liability company shall, for any purposes, be allocated among the members, and among classes or groups of members, in the manner provided in an LLC agreement.

(2) If the LLC agreement does not so provide, such profits and losses shall, for such purposes, 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

43 (1) Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in an LLC agreement.

(2) If the LLC agreement does not so provide, such distributions shall be made 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.

Certain defences not available

44 No obligation of a member or manager of a limited liability company to the limited liability company, or to a member or manager of the limited liability company, arising under the LLC agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager, shall be set aside or varied on the sole ground of the rate of interest charged or compensation to be paid by one party to another.

PART 6
MEMBERS

Admission of members

45 (1) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of—

- (a) the formation of the limited liability company; or
- (b) the time provided in and upon compliance with the LLC agreement or, if the LLC agreement does not so provide, when the person's name is entered in the register of members of the limited liability company.

(2) After the formation of a limited liability company, a person is admitted as a member of the limited liability company—

- (a) in the case of a person who is not an assignee of an LLC interest, including a person acquiring an LLC interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring an LLC interest in the limited liability company—
 - (i) at the time provided in and upon compliance with the LLC agreement; or
 - (ii) if the LLC agreement does not so provide, following the consent of all members, when the person's name is entered in the register of members of the limited liability company;
- (b) in the case of an assignee of an LLC interest, as provided in section 84(1); or
- (c) in the case of—
 - (i) a person being admitted as a member of an amalgamated or surviving limited liability company pursuant to an amalgamation or merger approved in accordance with section 92, as provided in the LLC agreement of the amalgamated or surviving limited liability company or in the amalgamation or merger agreement, and in the event of any inconsistency, the terms of the amalgamation or merger agreement shall control; and

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(ii) a person being admitted as a member of a limited liability company pursuant to a conversion of a company or an exempted limited partnership to a limited liability company approved in accordance with section 99 or 103, as provided in the LLC agreement of the limited liability company resulting from such conversion.

(3) 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 the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

(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 without acquiring an LLC interest in the limited liability company.

(5) Unless otherwise provided in an LLC agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring an LLC interest in the limited liability company.

(6) Unless otherwise provided in an LLC agreement or another agreement, a member shall have no preemptive right to subscribe to any additional issue of LLC interests or another interest in a limited liability company.

(7) No LLC interest shall be issued or transferred without the consent of the Authority if, as a result of such issuance or transfer—

- (a) any person would acquire an LLC interest carrying 10 percent or more of the voting rights of the limited liability company; or
- (b) any person holding an LLC interest carrying between 10 percent and 50 percent of the voting rights of the limited liability company would acquire an LLC interest carrying more than 50 percent of the voting rights of the limited liability company,

except that the consent of the Authority shall not be required where the limited liability company has its registered office at the registered office of a Licensed Corporate Service Provider.

Members: classes and voting

46 (1) An LLC agreement may provide for classes or groups of members having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes 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 and groups of members.

(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 member or class or group of members, including an action to create, under the provisions of the LLC agreement, a class or group of LLC interests that was not previously outstanding.

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(3) An LLC agreement may provide that any member or class or group of members shall have no voting rights.

(4) Unless otherwise provided in its LLC agreement or this Act, any matter to be decided by a vote of the members or class or group of members shall be decided on a simple majority of votes.

(5) Unless otherwise provided in its LLC agreement or this Act, any matter to be decided by a vote of the members or class or group of members shall be decided by the requisite majority of votes based on the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate.

(6) An LLC agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis pro rata in accordance with their LLC interests.

(7) An LLC agreement may set forth 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.

(8) Unless otherwise provided in an LLC agreement, meetings of members may be held by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

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

(10) Unless otherwise provided in an LLC agreement, if a person (whether or not then a member) consenting as a member to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a member at such future time so long as such a person is then a member.

(11) 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 applicable law.

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

(13) If an LLC agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the LLC agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, including as permitted by section 91 (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended).

(14) Unless otherwise provided in an LLC agreement, a supermajority amendment provision shall only apply to provisions of the LLC agreement that are expressly included in the LLC agreement.

(15) As used in this section, "supermajority amendment provision" means any amendment provision set forth in an LLC agreement requiring that an amendment to a provision of the LLC agreement be adopted by no less than the vote or consent required to take action under such latter provision.

(16) If an LLC agreement does not provide for the manner in which it may be amended, the LLC agreement may be amended with the approval of all of the members or as otherwise permitted by law, including as permitted by section 91.

Rights of classes or groups of members

47 (1) If in the case of a limited liability company the members of which are divided into different classes or groups, provision is made in the LLC agreement for authorizing the variation of rights attached to any class or group, subject to the consent of any specified proportions of the members of that class or group or the sanction of a resolution passed at a separate meeting of that class or group, and in pursuance of the said provision the rights attached to any such class or group are at any time varied, the holders of not less in the aggregate than 10 percent of the LLC interests (or, where the members of the class or group have no LLC interests, 10 percent of the members) of that class or group, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within 28 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the members of the class or group represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The limited liability company shall within 21 days after the making of an order by the Court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the limited liability company and any manager of the limited liability company who is in default shall be liable to a default fine.

(6) If the LLC agreement of a limited liability company the members of which are divided into different classes or groups makes no provision for varying the rights attached to any class or group and nothing in the LLC agreement precludes a variation of such rights, the rights attached to any class or group may be varied with the consent in writing of the holders of a majority of the LLC interests of that class or group (or, where the members of the class or group have no LLC interests, a majority of the members).

(7) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

Liability to third parties

48 (1) Except as otherwise provided by this Act, 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 manager or member 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 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 obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

Events of bankruptcy cessation of membership

49 A person shall cease to be a member of a limited liability company upon the happening of any of the following events—

- (a) unless otherwise provided in an LLC agreement, or with the written consent of all members, a member—
 - (i) makes an assignment for the benefit of creditors;
 - (ii) files a voluntary petition in bankruptcy or voluntarily commences its winding up;
 - (iii) is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;
 - (iv) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
 - (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;
 - (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or
- (b) unless otherwise provided in an LLC agreement, or with the written consent of all members—

- (i) 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed;
- (ii) if within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed; or
- (iii) if within 90 days after the expiration of any such stay under paragraph (b), the appointment is not vacated.

Records of account

50 (1) A limited liability company shall keep proper records of account with respect to its business including, without limiting the generality of the foregoing, records of account with respect to its assets, liabilities and capital, cash receipts and disbursements, purchases and sales and income, costs and expenses.

(2) Subject to subsection (3), the records of account shall be kept at the registered office or at such other place as the managers think fit, and shall at all times be open to inspection in accordance with section 53.

(3) If the records of account are kept at a place outside Bermuda, there shall be kept at the registered office such records of account as will enable the financial position of the limited liability company, at the end of each three month period, to be ascertained with reasonable accuracy.

(4) Every limited liability company shall keep from the date on which they were prepared, for a period of five years, records of account referred to in subsection (1) and, if applicable, subsection (3).

(5) Any manager of a limited liability company who knowingly contravenes, or permits or authorises the contravention of, subsection (4) commits an offence and is liable on summary conviction to a fine of \$7,500.

Financial statements

51 (1) Subject to the LLC agreement, a limited liability company shall, subject to section 52, at such intervals and for such periods as the LLC agreement provides, cause to be prepared—

- (a) financial statements which shall include—
 - (i) a statement of the results of operations for the period;
 - (ii) a statement of retained earnings or deficit;
 - (iii) a balance sheet at the end of such period;
 - (iv) a statement of changes in financial position or cash flows for the period;

- (v) notes to the financial statements, which notes shall be in accordance with subsection (2); and
- (vi) such further information as may be required by the LLC agreement; and
- (b) the report of an auditor in respect of the financial statements specified in paragraph (a).

(2) The notes mentioned in subsection (1)(a)(v) shall include a description of the generally accepted accounting principles used in the preparation of the financial statements which principles may be—

- (a) those of Bermuda or a country or jurisdiction other than Bermuda; or
- (b) such other generally accepted accounting principles as may be appointed for the purposes of the Companies Act 1981,

and, where the generally accepted accounting principles used are other than those of Bermuda, the notes shall identify the generally accepted accounting principles to used.

(3) If any manager fails to take all reasonable steps to comply with subsection (1) he shall be liable to a default fine not exceeding \$1,000.

Power to waive preparation of financial statements

52 If in respect of a particular interval all the members agree in writing that no financial statements or auditor's report thereon needs to be prepared, there shall be no obligation to cause financial statements or auditor's report thereon to be prepared for that interval.

Access to and confidentiality of information; records

53 (1) Each member of a limited liability company has the right, subject to such reasonable restrictions (including restrictions governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in an LLC agreement or otherwise established by the manager to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company—

- (a) records of account required to be kept under section 50(1);
- (b) any financial statements prepared under section 51;
- (c) a current list of the name and last known business, residence or mailing address of each manager;
- (d) a copy of any written LLC agreement and certificate of formation and all amendments thereto and restatements thereof;
- (e) 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 each member and which each member has agreed to contribute in the future, and the date on which each member became a member; and

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(f) other information regarding the affairs of the limited liability company as is reasonable.

(2) Any manager shall have the right to examine all of the information described in subsection (1), subject to such reasonable restrictions and for a purpose reasonably related to the position of manager.

(3) The resident representative shall have the right to examine all of the information described in subsection (1), subject to such reasonable restrictions for a purpose reasonably related to the position of resident representative.

(4) Any manager shall have the right to keep confidential from the members, for such period 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 interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(5) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(6) Any demand by a member, manager or resident representative under this section shall be in writing and shall state the purpose of such demand.

(7) Any action to enforce any right arising under this section shall be brought in the Court. If the limited liability company refuses to permit a member to obtain, or a manager or resident representative to examine, the information described in subsection (1) of this section or does not reply to the demand that has been made within ten days (or such shorter or longer period as is provided for in an LLC agreement but not longer than 30 days) after the demand has been made, the demanding member, manager or resident representative may apply to the Court for an order to compel such disclosure.

(8) The Court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought. The Court may summarily order the limited liability company to permit the demanding member to obtain or manager or resident representative to examine the information described in subsection (1) and to make copies or abstracts therefrom, or the Court may summarily order the limited liability company to furnish to the demanding member, manager or resident representative the information described in subsection (1) on the condition that the demanding member, manager or resident representative first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court deems appropriate.

(9) When a member seeks to obtain, or a manager or resident representative seeks to examine, the information described in subsection (1), the demanding member, manager or resident representative shall first establish—

- (a) that the demanding member, manager or resident representative has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information; and

(b) that the information the demanding member, manager or resident representative seeks is reasonably related to the member's interest as a member, the manager's position as a manager or the resident representative's position as a resident representative, as the case may be.

(10) The Court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the Court may deem just and proper.

(11) The Court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought to Bermuda and kept in Bermuda upon such terms and conditions as the order may prescribe.

(12) The rights of a member to obtain, or a manager or resident representative to examine, information as provided in this section may be restricted in an original LLC agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the LLC agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member to obtain, or a manager or resident representative to examine, information by any other means permitted under this Act.

Remedies for breach of LLC agreement by member

54 (1) A limited liability company agreement may provide that—

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

(2) Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in section 41(7).

Register of members

55 (1) A limited liability company shall keep and maintain up to date in the registered office of the limited liability company a register of members which shall contain the particulars specified in subsection (2).

(2) The particulars referred to in subsection (1) are—

- (a) the name and address of each member; and
- (b) in respect of a local LLC—
 - (i) a statement of the interests in the LLC held by each Bermudian member;
 - (ii) in respect of any interests that are not fully paid, specifying the amount paid or agreed to be considered as paid on such interests.

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(c) in respect of any limited liability company that does not keep a branch register pursuant to subsection (3), the date at which each person was entered in the register of members as a member.

(3) A limited liability company the interests in which are traded on an appointed stock exchange or which is subject to the rules and regulations of a competent regulatory authority may keep, in any place outside Bermuda, one or more branch registers of members after giving written notice to the Registrar of the place where each such branch register is to be kept.

(4) A branch register shall be kept in the same manner in which the register of members is by subsection (1) required to be kept.

(5) A limited liability company shall, as soon as reasonably practicable after the date on which an entry or alteration is made in a branch register of members, make any necessary alteration in the register of members.

(6) A limited liability company which contravenes, permits or authorises the contravention of the requirements of subsection (1) shall be liable on summary conviction to a fine of \$75 per day for every day that the limited liability company fails to comply as required.

(7) A limited liability company shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any LLC interests in such limited liability company are subject and whether or not the limited liability company had notice of such trust; and the receipt of the person, firm or corporation in whose name any LLC interests stand shall be sufficient discharge to the limited liability company for any money paid by the limited liability company in respect of such LLC interests notwithstanding any trust to which they may be subject.

(8) The register of members shall be prima facie evidence of any matter required to be inserted in the register under this Act.

Inspection of register of members

56 (1) Subject to the express terms of the LLC agreement, the register of members shall, during business hours and subject only to such reasonable restrictions as the limited liability company may impose, be open for inspection by any member, without charge.

(2) Subject to the express terms of the LLC agreement, a member may request a copy of the register of members, or any part thereof, on payment of \$5 or such less sum as the limited liability company may determine, for every hundred words or fractional part thereof required to be copied.

(3) If an inspection or a copy requested by a member by virtue of this section is refused, the limited liability company shall be liable in respect of each offence to a default fine not exceeding \$20 for every day during which the default continues.

(4) In this section and in section 57 the expression "register of members" includes a branch register.

Power of Court to rectify register of members

57 (1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a limited liability company; or
- (b) default is made or unnecessary delay occurs in entering on the register of members a particular required by section 55,

the person aggrieved or any member of the limited liability company may apply to the Court for rectification of the register of members.

(2) Where an application is made under this section, the Court may either refuse the application or order rectification of the register of members and payment by the limited liability company of any damages sustained by any person aggrieved.

(3) On an application under this section, the Court may decide any question necessary or expedient to be decided for rectification or otherwise of the register of members.

PART 7

MANAGERS

Admission of managers

58 A person may be named or appointed as a manager in, or designated as a manager pursuant to, an LLC agreement.

Register of managers

59 (1) Every limited liability company shall keep at its registered office a register of its managers and the register shall—

- (a) with respect to the particulars to be contained in it of the managers, comply with subsection (7); and
- (b) be filed with the Registrar.

(2) The limited liability company shall, within the period of 14 days from the occurrence of—

- (a) any change among its managers; or
- (b) any change in the particulars contained in the register,

enter on its register the particulars of the change and notify the Registrar of any such change.

(3) The register shall during business hours (subject to such reasonable restrictions as the limited liability company may impose, so that not less than two hours in each day is allowed for inspection) be open for inspection by members of the public without charge.

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(4) Any member of the public may require a copy of the register, or any part of it, on payment of a fee as may be prescribed.

(5) If an inspection required under this section is refused, or if default is made in complying with subsection (1) or (2) the limited liability company which is in default shall be liable in respect of each offence to a default fine set out under section 229.

(6) In the case of a refusal or default, the Court may by order compel an immediate inspection of the register.

(7) The register shall contain the following particulars with respect to each manager—

- (a) in the case of an individual, his present first name, surname and address; and
- (b) in the case of a company, its name and registered office.

Management of limited liability company

60 (1) Unless otherwise provided in an LLC agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the said percentage or other interest in the profits controlling.

(2) If an LLC agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the LLC agreement.

(3) The manager shall also hold the offices and have the responsibilities accorded to the manager by or in the manner provided in the LLC agreement.

(4) Subject to section 75, a manager shall cease to be a manager as provided in the LLC agreement.

(5) A limited liability company may have more than one manager.

(6) Unless otherwise provided in the LLC agreement, each member and manager has the authority to bind the limited liability company.

Contributions by a manager

61 (1) A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member.

(2) A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company 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.

Managers: classes and voting

62 (1) An LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the LLC agreement may provide, and may make provision for the future creation in the manner provided in the LLC agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers.

(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 limited liability company 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 and voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

(4) Unless otherwise provided in its LLC agreement or this Act, any matter to be decided by a vote of the managers or class or group of managers shall be decided on a simple majority of votes.

(5) An LLC agreement may set forth 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, meetings of managers may be held by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

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

(8) 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 applicable law.

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

Remedies for breach of LLC agreement by manager

63 An LLC agreement may provide that—

- (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 penalties or 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 penalties or specified consequences.

Reliance on reports and information

64 A member, manager or liquidator of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports or statements presented by another manager, member or liquidator, an officer or employee of the limited liability company, or committees of the limited liability company, members or managers, or by any other person as to matters the member, manager or liquidator reasonably believes are within such other person's professional or expert competence, including—

- (a) information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company;
- (b) the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company;
- (c) reasonable provision being made to pay such claims and obligations; or
- (d) any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

Delegation of rights and powers to manage

65 (1) Unless otherwise provided in the LLC agreement, a member or manager of a limited liability company has the power and authority to delegate to one or more other persons the member's or manager's, as the case may be, rights and powers to manage and control the business and 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 a management agreement or another agreement with, or otherwise to, other persons.

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

PART 8

LIMITED LIABILITY COMPANY OPERATIONS

Nature of business permitted; powers

66 Subject to sections 67 and 68, and its LLC agreement, a limited liability company may carry on any lawful business, purpose or activity.

Restricted business

67 (1) No limited liability company shall carry on any restricted business activity set out in the Ninth Schedule to the Companies Act 1981 without the consent of the Minister.

(2) An application for consent under subsection (1) shall be in such form and accompanied by such documents as the Minister may determine.

(3) Where the Minister refuses to grant his consent under subsection (1), he shall not be bound to assign any reason for his refusal and his decision shall not be subject to appeal or review in any court.

(4) Subject to subsection (5), an application for consent and any documents accompanying any such application shall be treated as confidential by the Minister and all public officers having access thereto.

(5) Subsection (4) does not preclude—

- (a) the disclosure of information for the purpose of enabling or assisting the Minister to exercise or perform any functions conferred upon him by this Act;
- (b) the disclosure of information or the transmitting of an application for consent and its accompanying documents to the Authority for the purpose of enabling or assisting the Authority to exercise or perform any functions conferred upon the Authority by the Bermuda Monetary Authority Act 1969.

(6) Where a limited liability company carries on any restricted business activity in contravention of subsection (1), the limited liability company may, on the application of the Registrar, be wound up by the Court pursuant to section 106.

(7) If a limited liability company makes default in obtaining the Minister's consent as required by subsection (1), the limited liability company and every manager of the limited liability company who is in default shall be liable to a default fine of \$100 for every day during which the default continues.

Prohibited business

68 (1) No limited liability company shall carry on any prohibited business activity set out in the Tenth Schedule to the Companies Act 1981.

(2) Where a limited liability company carries on any prohibited business activity in contravention of subsection (1), the limited liability company may, on the application of the Registrar, be wound up by the Court pursuant to section 106.

Form of contracts

- 69 (1) Contracts on behalf of a limited liability company may be made as follows—
- (a) a contract which if made between two or more persons would by law be required to be under seal, may be made on behalf of the limited liability company in writing—
 - (i) signed by any person acting under the express or implied authority of the limited liability company;
 - (ii) executed under the common seal of the limited liability company; or
 - (iii) signed or executed in such other manner as the LLC agreement may provide;
 - (b) a contract which if made between two or more persons would be by law required to be in writing, 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 its authority, express or implied;
 - (c) a contract which if made between two or more 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 its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the limited liability company and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(4) Where a contract purports to be made by a limited liability company or by a person as agent for a limited liability company, at a time when the limited liability company has not yet been formed, then, subject to any agreement to the contrary, the contract shall have effect as a contract entered into by the person purporting to act for the limited liability company or as agent for the limited liability company and he shall be personally liable on the contract accordingly.

(5) Any contract purported to be made in the manner set out in subsection (4) may subsequently be unilaterally adopted by the limited liability company and the limited liability company shall thereupon become a party thereto to the same extent as if the contract had been made after the formation of the limited liability company and in substitution for and discharge of the agent or person purporting to act on its behalf.

Execution of documents

70 (1) A limited liability company may, in writing, authorise any person, either generally or in respect of any specified matter, as its agent, to sign or execute deeds, instruments or other documents on its behalf in any place inside or outside Bermuda.

(2) A deed, instrument or document signed or executed by an authorised person on behalf of the limited liability company binds the limited liability company.

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(3) A limited liability company may, but need not, have a common seal and one or more duplicate common seals for use in any place inside or outside Bermuda.

(4) If a common seal or duplicate common seal is to be affixed to a deed, instrument or document, the affixing of the seal shall be attested to by the signature of at least one authorised person, or in such other manner as the LLC agreement may provide.

(5) A deed, instrument or document to which the common seal, or duplicate common seal, of the limited liability company is duly affixed binds the limited liability company.

Agreement not to exercise powers

71 Notwithstanding anything in this Act or in any rule of law, and subject to its LLC agreement, a limited liability company may agree that any statutory powers reserved to members of the limited liability company shall, in whole or in part, not be exercised.

Business transactions of member or manager with the limited liability company

72 Except as provided in an LLC agreement, a member or manager may lend money to, borrow money 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, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

Contested matters

73 (1) Upon application of any member or manager, the Court may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than one person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue.

(2) In any such application—

- (a) the limited liability company shall be named as a party and service of copies of the application upon the limited liability company shall also be deemed to be service upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager;
- (b) the limited liability company shall forward immediately a copy of the application to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such person or persons at their addresses last known to the limited liability company or furnished to the limited liability company by the applicant member or manager; and

- (c) the Court may, with respect to an application made under subsection (1), make such order respecting further or other notice of such application as it deems proper under the circumstances.
- (3) Upon application of any member or manager—
- (a) the Court may hear and determine the result of any vote of members or managers upon matters as to which of the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the LLC agreement or other agreement or this Act (other than the admission, election, appointment, removal or resignation of managers);
 - (b) the limited liability company shall be named as a party, and no other party need be joined in order for the Court to adjudicate the result of the vote; and
 - (c) the Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.
- (4) Any action to interpret, apply or enforce the provisions of an LLC agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, or any provision of this Act, or any other instrument, document, agreement or certificate contemplated by any provision of this Act, may be brought in the Court.
- (5) In this section, the term "manager" refers to a person—
- (a) who is a manager as defined in section 2; and
 - (b) whether or not a member of a limited liability company, who, although not a manager as defined in section 2, participates materially in the management of the limited liability company,
- except that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in section 2 shall not, by itself, constitute participation in the management of the limited liability company.
- (6) Nothing in this section limits or affects the right to serve process in any other manner as provided or may be provided by law.

PART 9

DISTRIBUTIONS AND RESIGNATION

Interim distributions

74 Subject to the provisions of this Part, 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 resignation from the limited liability company and before the winding up and dissolution thereof.

Resignation of manager

75 (1) A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in an LLC agreement and in accordance with the LLC agreement.

(2) An LLC agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company.

(3) Notwithstanding that an LLC agreement provides that a manager does not have the right to resign as a manager of a limited liability company or is silent as to a manager's right to resign, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers.

(4) If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the LLC agreement and offset the damages against the amount otherwise distributable to the resigning manager.

Resignation of member

76 (1) A member may resign from 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.

(2) Notwithstanding anything to the contrary under applicable law, unless an LLC agreement provides otherwise, a member may not resign from a limited liability company prior to the winding up and dissolution of the limited liability company.

(3) Notwithstanding anything to the contrary under applicable law, an LLC agreement may provide that an LLC interest may not be assigned prior to the winding up and dissolution of the limited liability company.

Distributions upon resignation

77 Subject to section 76(3), upon resignation any resigning member is entitled to receive any distribution to which such member is entitled under an LLC agreement and, if not otherwise provided in an LLC agreement, such member is entitled to receive, within a reasonable time after resignation, the fair value of such member's LLC interest as of the date of resignation based upon such member's right to share in distributions from the limited liability company.

Distributions in kind

78 (1) Except as provided in an LLC agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash.

(2) Except as provided in an LLC agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

(3) Except as provided in an LLC agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

Right to distributions

79 (1) Subject to sections 80 and 175, and unless otherwise provided in an LLC agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

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

Limitations on distributions

80 (1) A limited liability company shall not make a distribution to a member or otherwise in respect of an LLC interest if, on the date the distribution is to be effected, the managers have reasonable grounds for believing that after payment thereof the limited liability company would be unable to pay its liabilities as they become due.

(2) For purposes of subsection (1), the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits programme.

(3) A member who receives a distribution in violation of subsection (1), and who knew at the time of the distribution that the distribution violated subsection (1), shall be liable to the limited liability company for the amount of the distribution.

(4) A member who receives a distribution in violation of subsection (1), and who did not know at the time of the distribution that the distribution violated subsection (1), shall not be liable for the amount of the distribution.

(5) Subject to subsection (6), this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(6) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this Act or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution, unless an action to recover the distribution from such member is commenced prior to the expiration of the said three-year period and an adjudication of liability against such member is made in the said action.

PART 10
ASSIGNMENT OF LLC INTERESTS

Nature of LLC interest

- 81 (1) An LLC interest is personal property.
- (2) A member has no interest in specific property of the limited liability company.

Assignment of LLC interest

82 (1) An LLC interest is assignable in whole or in part except as provided in an LLC agreement.

(2) The assignee of a member's LLC interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in an LLC agreement or, unless otherwise provided in the LLC agreement, upon the affirmative vote or written consent of all of the members of the limited liability company.

(3) Unless otherwise provided in an LLC agreement—

- (a) an assignment of an LLC interest does not entitle the assignee to become or to exercise any rights or powers of a member;
- (b) an assignment of an LLC interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and
- (c) a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's LLC interest.

(4) Unless otherwise provided in an LLC agreement, the granting of a security interest or other encumbrance over or against, any or all of the LLC interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(5) Unless otherwise provided in an LLC agreement, a member's interest in a limited liability company may be evidenced by a certificate of LLC interest issued by the limited liability company.

(6) An LLC agreement may provide for the assignment or transfer of any LLC interest represented by a certificate of LLC interest and make other provisions with respect to such certificates, except that a limited liability company shall not have the power to issue a certificate of LLC interest in bearer form.

(7) Unless otherwise provided in an LLC agreement and except to the extent assumed by agreement, 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.

(8) Subject to subsection (9), unless otherwise provided in the LLC agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any LLC interest or other interest of a member or manager in the limited liability company.

(9) No acquisition by purchase, redemption, or otherwise, of any such interest may be effected if, on the date on which the acquisition is to be effected, the managers have reasonable grounds for believing that the limited liability company is, or after the acquisition would be, unable to pay its liabilities as they become due.

(10) Unless otherwise provided in an LLC agreement, any such interest so acquired by the limited liability company shall be deemed cancelled.

Member's LLC interest subject to charging order

83 (1) On application by a judgment creditor of a member or of a member's assignee, a court having jurisdiction may charge the LLC interest of the judgment debtor to satisfy the judgment.

(2) To the extent charged under subsection (1), the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such LLC interest.

(3) A charging order constitutes a charge on the judgment debtor's LLC interest.

(4) The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or a member's assignee may satisfy a judgment out of the judgment debtor's LLC interest and attachment, garnishment, foreclosure or other legal or equitable remedies are not available to the judgment creditor, whether the limited liability company has one member or more than one member.

(5) No creditor of a member or of a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(6) The Court shall have jurisdiction to hear and determine any matter relating to any such charging order.

Right of assignee to become member

84 (1) An assignee of an LLC interest may become a member—

(a) as provided in the LLC agreement; or

(b) unless otherwise provided in the LLC agreement, following the affirmative vote or written consent of all of the members of the limited liability company, when the assignee's name is entered on the register of members.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under an LLC agreement and this Act.

(3) Notwithstanding the foregoing, unless otherwise provided in an LLC agreement, an assignee who becomes a member is liable for the obligations of the assignor to make

contributions as provided in section 41, but shall not be liable for the obligations of the assignor under Part 10.

(4) The assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in section 41, unknown to the assignee at the time the assignee became a member and which could not be ascertained from the LLC agreement.

(5) 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 Parts 5 and 9.

Powers of estate of deceased or incompetent member

85 (1) If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's personal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any right or power under an LLC agreement of an assignee to become a member.

(2) If a member is a company or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.

PART 11

AMALGAMATIONS AND MERGERS

Amalgamation and merger

86 (1) Unless otherwise provided in an LLC agreement, two or more limited liability companies may, subject to section 67, amalgamate and continue as one limited liability company (the "amalgamated LLC").

(2) Unless otherwise provided in an LLC agreement, two or more limited liability companies may, subject to section 67, merge and their undertaking, property and liabilities shall vest in one of such limited liability companies as the surviving limited liability company (the "surviving LLC").

(3) Where the amalgamated or surviving LLC will be a local LLC, it must comply with the provisions of Part 2.

Amalgamation or merger of limited liability company and foreign entity and continuation as limited liability company

87 (1) Unless otherwise provided in an LLC agreement, one or more limited liability companies and one or more entities with separate legal personality, incorporated, formed or presently registered, as the case may be, outside Bermuda (each such entity hereinafter in this section and in sections 88 to 90 referred to as a "foreign entity"), may—

- (a) amalgamate and continue as the amalgamated LLC in Bermuda; or
- (b) merge and continue as the surviving LLC in Bermuda,

to which the provisions of this Act and any other relevant laws of Bermuda shall apply.

(2) In respect of an amalgamation under subsection (1)(a), a foreign entity shall obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or formed or is presently registered, as the case may be, in order to enable it to amalgamate and for the amalgamated LLC to continue as a limited liability company in Bermuda.

(3) In respect of a merger under subsection (1)(b), a foreign entity shall obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or formed or is presently registered, as the case may be, in order to enable it to merge and for the surviving LLC to continue as a limited liability company in Bermuda.

- (4) The provisions of sections 91 to 95 shall, mutatis mutandis, apply to—
- (a) an amalgamation under this section in the same way as they apply to an amalgamation under section 86(1); or
 - (b) a merger under this section in the same way as they apply to a merger under section 86(2).

Amalgamation or merger of limited liability company and foreign entity and continuation as foreign entity

88 (1) Unless otherwise provided in an LLC agreement, one or more limited liability companies and one or more foreign entities may—

- (a) amalgamate and continue as a foreign entity (the “amalgamated entity”); or
- (b) merge and the surviving entity continue as a foreign entity (the “surviving entity”),

to which the laws of the jurisdiction in which it is proposed that the amalgamated entity or surviving entity will continue (the “foreign jurisdiction”) shall apply.

(2) The limited liability company shall not amalgamate or merge and continue as a foreign entity pursuant to subsection (1) unless—

- (a) a manager of such limited liability company has made a statutory declaration to the effect that there are reasonable grounds for believing that—
 - (i) such limited liability company is, and the amalgamated entity or surviving entity will be, able to pay its liabilities as they fall due;
 - (ii) the realizable value of the amalgamated entity’s assets or surviving entity’s assets will not be less than the aggregate of its liabilities; and
 - (iii) the amalgamation or merger will not adversely affect the interests or rights of bona fide creditors and members;
- (b) an irrevocable deed poll is executed by such limited liability company and each manager (if any), pursuant to which—

- (i) such limited liability company and managers may be served with legal process in Bermuda in any proceeding arising out of actions or omissions of such limited liability company occurring prior to the amalgamation or merger, and provision is made for the appointment of a person within Bermuda as agent for such limited liability company for the service of process for a period of not less than three years from the effective date of the amalgamation or merger and for a signed acceptance of the appointment; or
- (ii) such limited liability company and managers may be served with legal process at a specified address in the United Kingdom, the United States of America or any appointed jurisdiction, and whereby such limited liability company and managers submit to the non-exclusive jurisdiction of the courts of that country or jurisdiction;
- (c) each foreign entity which is amalgamating or merging has obtained all necessary authorizations, if any, required under the laws of the jurisdiction in which it was formed or incorporated or is presently registered to enable it to so amalgamate or merge;
- (d) the foreign jurisdiction is—
 - (i) an appointed jurisdiction; or
 - (ii) approved by the Minister, upon application by the limited liability company for the purpose of the amalgamation or merger of the LLC with a foreign entity and the continuance of the amalgamated entity or surviving entity as a foreign entity in the foreign jurisdiction;
- (e) at least 14 days and not more than three months prior to the effective date of the amalgamation or merger—
 - (i) each limited liability company which is amalgamating or merging shall advertise in an appointed newspaper; and
 - (ii) each foreign entity which is amalgamating or merging shall advertise in a national newspaper in the jurisdiction in which it was incorporated or formed or is presently registered (as the case may be),

its intention to amalgamate and continue as a foreign entity in the foreign jurisdiction or to merge with the surviving entity to continue as a foreign entity in the foreign jurisdiction.

Documents to be filed on amalgamation or merger and continuation as foreign entity
89 (1) A limited liability company shall not amalgamate or merge and continue as a foreign entity pursuant to section 88 unless on or before the effective date of the amalgamation or merger such limited liability company files with the Registrar a notice of amalgamation or merger and continuance as a foreign entity which shall contain or have attached thereto the following information—

- (a) the effective date of the amalgamation or merger;

- (b) the name of the foreign jurisdiction;
- (c) the address of the registered office or the principal business address of the amalgamated entity or surviving entity in the foreign jurisdiction;
- (d) a copy of the statutory declaration required pursuant to section 88(2)(a);
- (e) a copy of the irrevocable deed poll required pursuant to section 88(2)(b);
and
- (f) a statement as to whether the limited liability company intends to amalgamate or merge.

(2) Within 30 days after the date of the issue thereof, the amalgamated entity or surviving entity continuing as a foreign entity as a result of an amalgamation or merger pursuant to section 88 shall file with the Registrar a copy of the instrument of amalgamation or merger issued by the appropriate authority of the foreign jurisdiction, or, if no such instrument of amalgamation or merger is issued, such other documentary evidence of the amalgamation or merger as shall be issued by such authority.

(3) On receipt of a copy of the instrument of amalgamation or merger or other documentary evidence of the amalgamation or merger filed under subsection (2), the Registrar shall file that instrument or document and issue a confirmation of amalgamation or merger which shall be in such form as the Minister may determine and thereupon the limited liability company shall cease to be formed as a limited liability company in Bermuda.

(4) The documents filed with the Registrar pursuant to subsections (1) and (2) shall be open to public inspection.

Provisions applicable to amalgamation or merger and continuation as foreign entity

90 (1) The provisions of sections 91 to 93 shall apply, with the necessary changes, to an amalgamation or merger and continuation as a foreign entity pursuant to section 88 in the same way as they apply to an amalgamation or a merger pursuant to section 84, except that the provisions of section 92 shall apply only to amalgamating or merging limited liability companies formed in Bermuda.

(2) The effect of an amalgamation or merger and continuation as a foreign entity pursuant to section 88 shall be the same as in the case of an amalgamation or a merger pursuant to section 87, except insofar as the laws of the foreign jurisdiction otherwise provide.

(3) The effective date of an amalgamation or merger and continuation as a foreign entity pursuant to section 88 shall be the date that the amalgamation or merger is effective pursuant to the laws of the foreign jurisdiction whereupon this Act shall cease to apply to such limited liability company except as is required by the provisions thereof.

Amalgamation agreement or merger agreement

91 (1) Each limited liability company proposing to amalgamate or merge shall enter into an amalgamation agreement or merger agreement, as the case may be, setting out the terms and means of effecting the amalgamation or merger and, in particular, setting out—

- (a) the provisions that are required to be included in the certificate of amalgamation or the certificate of merger;
- (b) the name and address of any proposed manager of the amalgamated or surviving LLC;
- (c) the manner in which the LLC interests of each amalgamating or merging limited liability company are to be exchanged or converted into LLC interests of the amalgamated or surviving LLC;
- (d) if any LLC interests of an amalgamating or merging LLC are not to be converted into LLC interests of the amalgamated or surviving LLC, the amount of money, securities or other property that the holders of such LLC interests are to receive in addition to or instead of LLC interests of the amalgamated or surviving LLC;
- (e) in respect of an amalgamation, whether the LLC agreement of the amalgamated LLC is to be that of one of the amalgamating LLCs and, if not, a copy of the proposed LLC agreement;
- (f) in respect of a merger, any proposed amendments to the LLC agreement of the surviving LLC or, if none are proposed, a statement that the LLC agreement of the surviving LLC immediately prior to the merger shall be its LLC agreement after the merger; and
- (g) details of any arrangements necessary to perfect the amalgamation or merger and to provide for the subsequent management and operation of the amalgamated or surviving LLC.

(2) If LLC interests of one of the amalgamating or merging LLCs are held by or on behalf of another of the amalgamating or merging LLCs, the amalgamation agreement or merger agreement shall provide for the cancellation of such LLC interests when the amalgamation or merger becomes effective without any payment in respect thereof, and no provision shall be made in the amalgamation or merger agreement for the conversion of such LLC interests into LLC interests of the amalgamated or surviving LLC.

Member approval

92 (1) Unless otherwise provided in its LLC agreement, each amalgamating or merging LLC shall submit the amalgamation agreement or merger agreement for approval of its members and, if there is more than one class of members, subject to subsection (5), by each class of members.

(2) A notice of a meeting of members shall be sent to each member of each amalgamating or merging LLC and, unless otherwise provided in the LLC agreement, shall—

- (a) include or be accompanied by a copy or summary of the amalgamation agreement or merger agreement; and
- (b) subject to subsection (3), state—

- (i) the fair value of such member's LLC interest as determined by the relevant amalgamating or merging LLC; and
- (ii) that a dissenting member is entitled to be paid the fair value of his LLC interest.

(3) Notwithstanding subsection (2)(b)(ii), failure to state the matter referred to in that subsection does not invalidate an amalgamation or merger.

(4) Unless otherwise provided in the LLC agreement, each LLC interest of an amalgamating or merging LLC carries the right to vote in respect of an amalgamation or merger whether or not it otherwise carries the right to vote.

(5) Unless otherwise provided in the LLC agreement, the members of a class of members of an amalgamating or merging LLC are entitled to vote separately as a class in respect of an amalgamation or merger if the amalgamation agreement or merger agreement contains a provision which would constitute a variation of the rights attaching to any such class of members for the purposes of section 47.

(6) Any provisions of the LLC agreement relating to the holding of members' meetings shall apply to members' meetings and class meetings required by this section provided that, unless the LLC agreement otherwise provides, the resolution of the members or class must be approved by a majority vote of those voting at such meeting and the quorum necessary for such meeting shall be two persons at least holding or representing by proxy more than one-third of the LLC interests or the LLC interests of the class, as the case may be.

(7) Unless otherwise provided in the LLC agreement, any member who did not vote in favour of the amalgamation or merger and who is not satisfied that he has been offered fair value for his LLC interests may within one month of the giving of the notice referred to in subsection (2) apply to the Court to appraise the fair value of his LLC interests.

(8) Subject to subsection (9), within one month of the Court appraising the fair value of any LLC interests under subsection (7) the limited liability company shall be entitled either—

- (a) to pay to the dissenting member an amount equal to the value of his LLC interests as appraised by the Court; or
- (b) to terminate the amalgamation or merger in accordance with subsection (12).

(9) Where the Court has appraised any LLC interests under subsection (7) and the amalgamation or merger has proceeded prior to the appraisal then, within one month of the Court appraising the value of the LLC interests, if the amount paid to the dissenting member for his LLC interests is less than that appraised by the Court, the amalgamated or surviving LLC shall pay to such member the difference between the amount paid to him and the value appraised by the Court.

(10) No appeal shall lie from an appraisal by the Court under this section.

(11) The costs of any application to the Court under this section shall be in the discretion of the Court.

(12) An amalgamation agreement or merger agreement may provide that at any time before the issue of a certificate of amalgamation or certificate of merger such agreement may, unless otherwise provided in the LLC agreement, be terminated by the managers, if any, of an amalgamating or merging LLC, notwithstanding approval of the agreement by the members of all or any of the amalgamating or merging LLCs.

Short form amalgamation or merger

93 (1) Unless otherwise provided in the LLC agreement, a limited liability company (the “parent LLC”) and one or more of its wholly-owned LLCs (“subsidiary LLCs”) may amalgamate and continue as one LLC or merge and the parent LLC continue as the surviving LLC without complying with sections 91 and 92 if—

- (a) the amalgamation or merger is approved by each amalgamating or merging LLC by the person or persons in whom the management of such limited liability company is vested pursuant to section 60; and
- (b) the resolutions provide that—
 - (i) the LLC interests of each amalgamating or merging subsidiary LLC shall be cancelled without any payment in respect thereof;
 - (ii) the certificate of formation and LLC agreement of the amalgamated or surviving LLC shall be the same as the certificate of formation and LLC agreement of the amalgamating or merging parent LLC; and
 - (iii) no LLC interests shall be issued by the amalgamated or surviving LLC in connection with the amalgamation or merger.

(2) Two or more subsidiary LLCs of the same parent LLC may amalgamate and continue as one limited liability company or merge and one of the subsidiary LLCs may continue as the surviving LLC without complying with sections 91 and 92 if—

- (a) the amalgamation or merger is approved by each amalgamating or merging LLC by the person or persons in whom the management of such limited liability company is vested;
- (b) in respect of an amalgamation, the resolutions provide that—
 - (i) the LLC interests of all but one of the amalgamating subsidiary LLCs shall be cancelled without any payment in respect thereof; and
 - (ii) the certificate of formation and LLC agreement of the amalgamated LLC shall be the same as the certificate of formation and LLC agreement of the amalgamating subsidiary LLC whose LLC interests are not cancelled; or
- (c) in respect of a merger, the resolutions provide that—
 - (i) one of the merging subsidiary LLCs is the surviving LLC;
 - (ii) the LLC interests of all but the surviving LLC shall be cancelled without any payment in respect thereof; and

- (iii) the LLC agreement shall be the same as the LLC agreement of the surviving LLC.

(3) In this section, where it is intended that there be a continuation of a foreign entity after the amalgamation or merger, the term “surviving LLC” shall be deemed to include “surviving entity”.

Registration of amalgamated or surviving LLC

94 (1) The limited liability companies which are to amalgamate shall jointly file with the Registrar a certificate of amalgamation executed on behalf of each such limited liability company in accordance with section 34 and which shall state—

- (a) the name of the amalgamated LLC and, if applicable, its secondary name;
- (b) the address of the registered office of the amalgamated LLC;
- (c) the name of each limited liability company which is to amalgamate; and
- (d) any other matters the members determine to include therein.

(2) The limited liability companies which are to merge shall jointly file with the Registrar a certificate of merger, executed on behalf of each such limited liability company in accordance with section 34 and which shall state—

- (a) the name of the surviving LLC and, if applicable, its secondary name;
- (b) the address of the registered office of the surviving LLC;
- (c) the name of each LLC which is to merge; and
- (d) any other matters the members determine to include therein.

(3) The certificate of amalgamation or certificate of merger shall be accompanied by a statutory declaration by a manager of each amalgamating or merging LLC confirming that there are reasonable grounds for believing that—

- (a) each amalgamating or merging LLC is and the amalgamated LLC or surviving LLC will be able to pay its liabilities as they become due;
- (b) the realizable value of the amalgamated or surviving LLC’s assets will not be less than the aggregate of its liabilities; and
- (c) the amalgamation or merger will not adversely affect the interests or rights of bona fide creditors or members.

(4) The limited liability companies are amalgamated or merged at the time of filing with the Registrar of the certificate of amalgamation or the certificate of merger (as the case may be) or at any later date or time (which shall be a date or time certain) specified in the certificate of amalgamation or the certificate of merger if, in either case, there has been compliance with the requirements of this section, whereupon—

- (a) the certificate of amalgamation shall be deemed to be the certificate of formation of the amalgamated LLC and the provisions of this Act respecting a certificate of formation shall, mutatis mutandis, apply to the certificate

of amalgamation, however, the date of formation of a limited liability company is its original date of formation and its amalgamation with another limited liability company does not alter its original date of formation; or

- (b) the certificate of merger shall be deemed to be the certificate of formation of the surviving LLC and the provisions of this Act respecting a certificate of formation shall, mutatis mutandis, apply to the certificate of merger, however the date of formation of the surviving LLC is its original date of formation and its merger with another limited liability company does not alter the surviving LLC's original date of formation.

Effect of certificate of amalgamation or merger

95 (1) On the filing with the Registrar of a certificate of amalgamation or on the future effective date or time (which shall be a date or time certain) specified in a certificate of amalgamation filed with the Registrar—

- (a) the amalgamation of the amalgamating LLCs and their continuance as one limited liability company shall become effective;
- (b) any amendment to the LLC agreement of the amalgamated LLC, in accordance with the amalgamation agreement, shall become effective;
- (c) the property of each amalgamating LLC shall become the property of the amalgamated LLC;
- (d) the amalgamated LLC shall continue to be liable for the obligations of each amalgamating LLC;
- (e) an existing cause of action, claim or liability to prosecution shall be unaffected;
- (f) a civil, criminal or administrative action or proceeding pending by or against an amalgamating LLC may be continued to be prosecuted by or against the amalgamated LLC;
- (g) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating LLC may be enforced by or against the amalgamated LLC.

(2) On the filing with the Registrar of a certificate of merger or on the future effective date or time specified in a certificate of merger filed with the Registrar—

- (a) the merger of the merging LLCs and the vesting of their undertaking, property and liabilities in the surviving LLC shall become effective;
- (b) any amendment to the LLC agreement of the surviving LLC, in accordance with the merger agreement, shall become effective;
- (c) the surviving LLC shall continue to be liable for the obligations of each merging LLC;

- (d) an existing cause of action, claim or liability to prosecution shall be unaffected;
- (e) a civil, criminal or administrative action or proceeding pending by or against a merging LLC may be continued to be prosecuted by or against the surviving LLC;
- (f) a conviction against, or ruling, order or judgment in favour of or against, a merging LLC may be enforced by or against the surviving LLC;
- (g) the Registrar shall strike off the register each Bermuda registered merging LLC that is not the surviving LLC and each such merging LLC will be dissolved; and
- (h) the cessation of a merging LLC that is not the surviving LLC in a merger shall not be a winding up for the purposes of this Act.

(3) No defect in the formalities leading up to the amalgamation or merger of a limited liability company shall affect the validity of the amalgamation or merger thereof and a certificate of filing of certificate of amalgamation or merger shall be conclusive evidence of the due amalgamation or merger of the limited liability company (as the case may be) and the date of such amalgamation or merger.

PART 12

CONTINUANCE AND DISCONTINUANCE OF LIMITED LIABILITY COMPANY AND CONVERSION OF LIMITED LIABILITY COMPANY

Continuance in Bermuda of foreign limited liability companies

96 (1) Subject as provided in this section, a foreign limited liability company may continue in Bermuda by filing with the Registrar, in accordance with section 36—

- (a) a certificate of continuance that has been executed by an authorised person in accordance with section 34; and
- (b) the Authority's consent to the continuation of the foreign limited liability company as an exempted LLC in Bermuda, the application for which consent shall be in such form and accompanied by such documents as the Authority may require, provided that the consent of the Authority shall not be required where the persons seeking to continue the foreign limited liability company have engaged the services of a Licensed Corporate Service Provider.

(2) Where the Authority refuses consent to the continuance of a foreign limited liability company pursuant to subsection (1), the Authority shall not be bound to give any reason for such refusal and that refusal shall not be subject to appeal or review in any court.

(3) Prior to filing a certificate of continuance with the Registrar under subsection (1), a foreign limited liability company seeking to be continued in Bermuda shall—

- (a) obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was formed or is presently registered in order to enable it to continue as an exempted LLC in Bermuda; and
 - (b) reserve the name of the exempted LLC in accordance with section 7.
- (4) The certificate of continuance shall state—
- (a) the name of the exempted LLC and, if applicable, its secondary name;
 - (b) the address of the registered office of the exempted LLC;
 - (c) the name of the foreign limited liability company immediately prior to the filing of the certificate of continuance;
 - (d) the date on which, and jurisdiction where, the foreign limited liability company was first formed;
 - (e) the jurisdiction from which the foreign limited liability company is continuing; and
 - (f) any other matter the members determine to include in the certificate.
- (5) A foreign limited liability company shall be continued as an exempted LLC in Bermuda at the time of the filing of its certificate of continuance with the Registrar or at any later date or time (which shall be a date or time certain) specified in the certificate of continuance if, in either case, there has been compliance with the requirements of this section, whereupon—
- (a) the foreign limited liability company will become an exempted LLC to which this Act and any other relevant laws of Bermuda shall apply as if it had been formed in Bermuda on such date or time; and
 - (b) its certificate of continuance shall be deemed its certificate of formation and the provisions of this Act regarding a certificate of formation shall, *mutatis mutandis*, apply to the certificate of continuance.
- (6) Upon the continuance of a foreign limited liability company as an exempted LLC company in Bermuda—
- (a) the property of the foreign limited liability company continues to be the property of the exempted LLC;
 - (b) the exempted LLC continues to be liable for the obligations of the foreign limited liability company;
 - (c) any existing cause of action, claim or liability to prosecution in respect of the foreign limited liability company is unaffected;
 - (d) any civil, criminal or administrative action or proceeding pending by or against the foreign limited liability company may be continued by or against the exempted LLC; and

- (e) any conviction against, or any ruling, order or judgment in favour of or against the foreign limited liability company may be enforced by or against the exempted LLC.

(7) The continuance of a foreign limited liability company under this section shall not be deemed to—

- (a) create a new legal entity; or
- (b) prejudice or affect the continuity of the exempted LLC which was formerly a foreign limited liability company, now an exempted LLC continued in Bermuda under this section.

(8) The Courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued exempted LLC shall be prejudiced in pursuing in or under the laws of Bermuda a bona fide claim that existed prior to the date or time of continuance and which could have been pursued under the laws then governing such foreign limited liability company.

(9) In connection with a continuation in Bermuda, the members shall enter into an LLC agreement in accordance with section 5.

(10) An exempted LLC shall, within one month after the date on which its continuance is effective in Bermuda, pay the appropriate fee payable in respect of an exempted LLC in accordance with fees prescribed under section 2 of the Government Fees Act 1965, but where such effective date is after 31 August in any year, the fee payable in respect of that year shall be half the appropriate fee.

Discontinuance of exempted LLCs to foreign jurisdictions

97 (1) An exempted LLC may discontinue under this Act and continue in a jurisdiction outside Bermuda (the “continued entity”) to which the laws of the jurisdiction in which it is proposed that the continued entity will continue (the “foreign jurisdiction”) shall apply.

(2) The exempted LLC shall not discontinue pursuant to subsection (1) unless—

- (a) the discontinuance is approved—
 - (i) by a resolution of the members, or of each class or group of members, is passed in general meeting approving the discontinuance, except that, subject to the LLC agreement, at any such meeting each LLC interest shall carry the right to vote in respect of such discontinuance whether or not it otherwise carries the right to vote; or
 - (ii) in such manner as may be authorised by the LLC agreement;
- (b) a manager of such exempted LLC has made a statutory declaration to the effect that there are reasonable grounds for believing that—
 - (i) such exempted LLC is able to pay its liabilities as they fall due;
 - (ii) the realizable value of its assets will not be less than the aggregate of its liabilities; and

- (iii) the discontinuance will not adversely affect the interests or rights of bona fide creditors and members;
- (c) an irrevocable deed poll is executed by such exempted LLC and each manager (if any), pursuant to which—
 - (i) such exempted LLC and managers may be served with legal process in Bermuda in any proceeding arising out of actions or omissions of such limited liability company occurring prior to the discontinuance, and provision is made for the appointment of a person within Bermuda as agent for such limited liability company for the service of process for a period of not less than three years from the effective date of the discontinuance and for a signed acceptance of the appointment; or
 - (ii) such exempted LLC and managers may be served with legal process at a specified address in the United Kingdom, the United States of America or any appointed jurisdiction, and whereby such exempted LLC and managers submit to the non-exclusive jurisdiction of the courts of that country or jurisdiction;
- (d) the foreign jurisdiction is—
 - (i) an appointed jurisdiction; or
 - (ii) approved by the Minister, upon application by the exempted LLC for the purpose of the continuance of the exempted LLC as a foreign entity in the foreign jurisdiction; and
- (e) at least 14 days and not more than three months prior to the effective date of the discontinuance, such exempted LLC shall advertise in an appointed newspaper its intention to continue as a foreign entity in the foreign jurisdiction.

Documents to be filed on discontinuance and continuance to foreign jurisdiction

98 (1) An exempted LLC shall not discontinue pursuant to section 97 unless on or before the effective date of the discontinuance such exempted LLC files with the Registrar a notice of the discontinuance which shall contain or have attached thereto the following information—

- (a) the effective date of the discontinuance;
 - (b) the name of the foreign jurisdiction;
 - (c) the address of the registered office or the principal business address of the continued entity in the foreign jurisdiction;
 - (d) a copy of the statutory declaration required pursuant to section 97(2)(b); and
 - (e) a copy of the irrevocable deed poll required pursuant to section 97(2)(c).
- (2) Within 30 days after the date of the issue thereof, the continued entity shall file with the Registrar a copy of the instrument of continuance issued by the appropriate

authority of the foreign jurisdiction, or, if no such instrument of continuance is issued, such other documentary evidence of the continuance as shall be issued by such authority.

(3) On receipt of a copy of the instrument of continuance or other documentary evidence of the continuance filed under subsection (2), the Registrar shall file that instrument or document and issue a confirmation of discontinuance which shall be in such form as the Minister may determine and thereupon the exempted LLC shall cease to be registered as an exempted LLC in Bermuda.

(4) The documents filed with the Registrar pursuant to subsections (1) and (2) shall be open to public inspection.

Provisions applicable to discontinuance and continuation as foreign entity

99 (1) The effective date of the discontinuance of an exempted LLC pursuant to section 97 shall be the date that such exempted LLC's continuance in the foreign jurisdiction is effective pursuant to the laws of the foreign jurisdiction, and such discontinuance and continuance shall not be deemed to operate to—

- (a) create a new legal entity; or
- (b) prejudice or affect the continuity of the body corporate which was formerly the exempted LLC that was subject to this Act.

(2) On the effective date of the discontinuance of an exempted LLC pursuant to subsection (1), this Act shall cease to apply to such exempted LLC except as is required by the provisions hereof.

Conversion of limited liability company to company

100 (1) Subject to subsection (9), a limited liability company may, at any time, in such manner as may be authorised by its LLC agreement, convert to a company to which the provisions of the Companies Act 1981 and any other relevant laws of Bermuda shall apply, by complying with this section.

(2) A limited liability company may convert to a company by filing with the Registrar in accordance with section 36—

- (a) a certificate of conversion of the limited liability company to a company that has been executed in accordance with section 34;
- (b) the memorandum of association of the company which complies with section 7 of the Companies Act 1981;
- (c) notice of the registered office of the company in the prescribed form under section 62 of the Companies Act 1981;
- (d) the Authority's consent to the conversion of the limited liability company to a company, the application for which consent shall be in such form, and be accompanied by such documents, as the Authority may require;
- (e) a declaration signed by a member stating—

- (i) that the limited liability company is solvent and can meet all of its liabilities and obligations and that the conversion will not adversely affect the interests or rights of bona fide creditors and members; and
 - (ii) that at least 14 days prior to its application for consent, the limited liability company advertised in an appointed newspaper and in a national newspaper in each jurisdiction within which it carried on a substantial part of its business activities its intention to make the application; and
 - (f) confirmation that the members have approved in writing a form of bye-laws of the continuing company which conform to the requirements of the Companies Act 1981 and any other applicable law of Bermuda.
- (3) Where the Authority refuses consent to the conversion of the limited liability company to a company pursuant to subsection (2), the Authority shall not be bound to give any reason for such refusal and that refusal shall not be subject to appeal or review in any court.
- (4) The notice of conversion of a limited liability company to a company shall state—
- (a) the name of the limited liability company and, if applicable, its secondary name;
 - (b) the effective date of the conversion; and
 - (c) the name of the company and, if applicable, its secondary name.
- (5) The effective date of the conversion of a limited liability company to a company pursuant to this section shall be the date that such conversion is effective pursuant to the Companies Act 1981, and such conversion shall not be deemed to—
- (a) create a new legal entity;
 - (b) prejudice or affect the continuity of the company which was formerly the limited liability company;
 - (c) wind up or dissolve the limited liability company; or
 - (d) transfer the rights, privileges, powers or interests in property of the limited liability company or the debts, liabilities or duties of the limited liability company to the company for any purpose of the laws of Bermuda.
- (6) Upon the conversion of the limited liability company to a company—
- (a) the property of the limited liability company continues to be the property of the company;
 - (b) the company continues to be liable for the obligations of the limited liability company;
 - (c) any existing cause of action, claim or liability to prosecution in respect of the limited liability company is unaffected;

- (d) any civil, criminal or administrative action or proceeding pending by or against the limited liability company may be continued by or against the company; and
- (e) any conviction against, or any ruling, order or judgment in favour of or against the limited liability company may be enforced by or against the company.

(7) In connection with a conversion of a limited liability company to a company, rights or securities of or interests in the limited liability company may be exchanged for or converted into cash, property or rights or securities of or interests in the company to which the limited liability company has converted.

(8) Unless otherwise provided in its LLC agreement, the conversion of a limited liability company to a company must be approved by its members and, if there is more than one class or group of members, by each class or group of members.

(9) An LLC agreement may provide that the limited liability company shall not have the power to convert to a company as set forth in this section.

(10) No defect in the formalities leading up to the conversion of a limited liability company to a company shall affect the validity of such conversion and a certificate of filing of certificate of conversion of the limited liability company to a company shall be conclusive evidence of the conversion of the limited liability company to a company and the date of such conversion.

Conversion of company to limited liability company

101 (1) A company may convert to a limited liability company to which the provisions of this Act and any other relevant laws of Bermuda shall apply, by complying with this section.

(2) A company may convert to a limited liability company by filing with the Registrar in accordance with section 36—

- (a) a certificate of conversion of a company to a limited liability company that has been executed in accordance with section 34;
- (b) the Authority's consent to the conversion of the company to a limited liability company, the application for which consent shall be in such form, and be accompanied by such documents, as the Authority may require;
- (c) a declaration signed by a member of a company stating—
 - (i) that the company is solvent and can meet all of its liabilities and obligations and that the conversion will not adversely affect the interests or rights of bona fide creditors and members; and
 - (ii) that at least 14 days prior to its application for consent, the company advertised in an appointed newspaper and in a national newspaper in each jurisdiction within which it carried on a substantial part of its business activities its intention to make the application; and

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(d) confirmation that the members of the company have approved a form of LLC agreement of the limited liability company.

(3) Where the Authority refuses consent to the conversion of the company to a limited liability company pursuant to subsection (2), the Authority shall not be bound to give any reason for such refusal and that refusal shall not be subject to appeal or review in any court.

(4) The certificate of conversion of company to limited liability company shall state—

- (a) the name of the limited liability company and, if applicable, its secondary name;
- (b) the address of the registered office of the limited liability company;
- (c) the name of the company and, if applicable, its secondary name;
- (d) the future effective date or time (which shall be a date or time certain) of the conversion of the company to a limited liability company if it is not to be effective upon the filing of the certificate of conversion of company to limited liability company; and
- (e) any other matters the members determine to include therein.

(5) The effective date of the conversion of a company to a limited liability company pursuant to this section shall be the date of filing with the Registrar of the certificate of conversion of a company to a limited liability company or any later date or time (which shall be a date or time certain) specified in the certificate of conversion of company to limited liability company.

(6) The conversion of a company to a limited liability company pursuant to this section shall not be deemed to—

- (a) create a new legal entity;
- (b) prejudice or affect the continuity of the limited liability company which was formerly the company;
- (c) wind up or dissolve the company; or
- (d) transfer the rights, privileges, powers or interests in property of the company or the debts, liabilities or duties of such company to the limited liability company for any purpose of the laws of Bermuda.

(7) Upon the conversion of a company to a limited liability company—

- (a) the property of the company continues to be the property of the limited liability company;
- (b) the limited liability company continues to be liable for the obligations of the company;
- (c) any existing cause of action, claim or liability to prosecution in respect of the company is unaffected;

- (d) any civil, criminal or administrative action or proceeding pending by or against the company may be continued by or against the limited liability company;
- (e) any conviction against, or any ruling, order or judgment in favour of or against the company may be enforced by or against the limited liability company; and
- (f) its certificate of conversion of company to limited liability company shall be deemed its certificate of formation and the provisions of this Act respecting a certificate of formation shall, mutatis mutandis, apply to a certificate of conversion of a company to a limited liability company.

(8) The courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the LLC shall be prejudiced in pursuing in or under the laws of Bermuda a bona fide claim that existed prior to the date or time of conversion of the company to a limited liability company.

(9) In connection with the conversion of a company to a limited liability company, the company members shall enter into an LLC agreement in accordance with section 5.

(10) In connection with the conversion of a company to a limited liability company, rights or securities of or interests in the company may be exchanged for or converted into cash, property or rights or securities of or interests in the limited liability company to which the company has converted.

(11) No defect in the formalities leading up to the conversion of a company to a limited liability company shall affect the validity of such conversion and a certificate of filing of certificate of conversion of a company to a limited liability company shall be conclusive evidence of the conversion of the company to a limited liability company and the date of such conversion.

Conversion of exempted LLC to exempted limited partnership

102 (1) Subject to subsection (9), an exempted LLC may, at any time, in such manner as may be authorised by its LLC agreement, convert to an exempted limited partnership which has elected to have legal personality under the Partnership Act 1902 and to which the provisions of the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883 and any other relevant laws of Bermuda shall apply, by complying with this section.

(2) An exempted LLC may convert to an exempted limited partnership which has elected to have legal personality under the Partnership Act 1902 by filing with the Registrar in accordance with section 36—

- (a) a certificate of conversion of exempted LLC to exempted limited partnership;
- (b) the certificate of exempted partnership which complies with the Exempted Partnerships Act 1992;
- (c) the certificate of limited partnership which complies with the Limited Partnership Act 1883;

- (d) notice of the registered office of the exempted limited partnership in accordance with the Exempted Partnerships Act 1992;
- (e) the Authority's consent to the conversion of the exempted LLC to an exempted limited partnership, the application for which consent shall be in such form, and be accompanied by such documents, as the Authority may require;
- (f) a declaration signed by a member stating—
 - (i) that the exempted LLC is solvent and can meet all of its liabilities and obligations and that the conversion will not adversely affect the interests or rights of bona fide creditors and members; and
 - (ii) that at least 14 days prior to its application for consent, the exempted LLC advertised in an appointed newspaper and in a national newspaper in each jurisdiction within which it carried on a substantial part of its business activities its intention to make the application; and
- (g) confirmation that the members have approved a form of partnership agreement of the partnership.

(3) Where the Authority refuses consent to the conversion of the exempted LLC to an exempted limited partnership pursuant to subsection (2), the Authority shall not be bound to give any reason for such refusal and that refusal shall not be subject to appeal or review in any court.

(4) The notice of conversion of an exempted LLC to an exempted limited partnership shall state—

- (a) the name of the exempted LLC and, if applicable, its secondary name;
- (b) the effective date of the conversion; and
- (c) the name of the exempted limited partnership and, if applicable, its secondary name.

(5) The effective date of the conversion of an exempted LLC to an exempted limited partnership pursuant to this section shall be the date that such exempted LLC's conversion is effective pursuant to the Exempted Partnerships Act 1992 and Limited Partnership Act 1883.

- (a) create a new legal entity;
- (b) prejudice or affect the continuity of the exempted limited partnership which was formerly the exempted LLC ;
- (c) wind up or dissolve the exempted LLC ; or
- (d) transfer the rights, privileges, powers or interests in property of the exempted LLC or the debts, liabilities or duties of the exempted LLC to the exempted limited partnership for any purpose of the laws of Bermuda.

(6) The conversion of an exempted LLC to an exempted limited partnership pursuant to this section shall not be deemed to—

- (a) create a new legal entity;
- (b) prejudice or affect the continuity of the exempted limited partnership which was formerly the exempted LLC;
- (c) wind up or dissolve the exempted LLC ; or
- (d) transfer the rights, privileges, powers or interests in property of the exempted LLC or the debts, liabilities or duties of the exempted LLC to the exempted LLC for any purpose of the laws of Bermuda.

(7) Upon the conversion of an exempted LLC to an exempted limited partnership—

- (a) the property of the exempted LLC continues to be the property of the exempted limited partnership;
- (b) the exempted limited partnership continues to be liable for the obligations of the exempted LLC ;
- (c) any existing cause of action, claim or liability to prosecution in respect of the exempted LLC is unaffected;
- (d) any civil, criminal or administrative action or proceeding pending by or against the exempted LLC may be continued by or against the exempted limited partnership; and
- (e) any conviction against, or any ruling, order or judgment in favour of or against the exempted LLC may be enforced by or against the exempted limited partnership.

(8) In connection with a conversion of an exempted LLC to an exempted limited partnership, rights or securities of or interests in the exempted LLC may be exchanged for or converted into cash, property or rights or securities of or interests in the exempted limited partnership to which the exempted LLC has converted.

(9) Unless otherwise provided in its LLC agreement, the conversion of an exempted LLC to an exempted limited partnership must be approved by its members and, if there is more than one class or group of members, by each class or group of members.

(10) An LLC agreement may provide that the exempted LLC shall not have the power to convert to an exempted limited partnership as set forth in this section.

(11) No defect in the formalities leading up to the conversion of an exempted LLC to an exempted limited partnership shall affect the validity of such conversion and a certificate of filing of certificate of conversion of conversion of an exempted LLC to an exempted partnership shall be conclusive evidence of the conversion of the exempted LLC to an exempted limited partnership and the date of such conversion.

Conversion of exempted limited partnership to exempted LLC

103 (1) An exempted limited partnership which has elected to have legal personality pursuant to the Partnership Act 1902 may convert to an exempted LLC to which the provisions of this Act and any other relevant laws of Bermuda shall apply, by complying with this section.

(2) An exempted limited partnership which has elected to have legal personality pursuant to the Partnership Act 1902 may convert to an exempted LLC by filing with the Registrar in accordance with section 36—

- (a) a certificate of conversion of exempted limited partnership to exempted LLC that has been executed in accordance with section 34;
- (b) the Authority's consent to the conversion of the exempted limited partnership to an exempted LLC, the application for which consent shall be in such form, and be accompanied by such documents, as the Authority may require;
- (c) a declaration signed by a partner stating—
 - (i) that the partnership is solvent and can meet all of its liabilities and obligations and that the conversion will not adversely affect the interests or rights of bona fide creditors and partners; and
 - (ii) that at least 14 days prior to its application for consent, the partnership advertised in an appointed newspaper and in a national newspaper in each jurisdiction within which it carried on a substantial part of its business activities its intention to make the application; and
- (d) confirmation that the partners have approved a form of LLC agreement of the limited liability company.

(3) Where the Authority refuses consent to the conversion of an exempted limited partnership to an exempted LLC pursuant to subsection (2), the Authority shall not be bound to give any reason for such refusal and that refusal shall not be subject to appeal or review in any court.

(4) The certificate of conversion of exempted limited partnership to exempted LLC shall state—

- (a) the name of the exempted LLC and, if applicable, its secondary name;
- (b) the address of the registered office of the exempted LLC;
- (c) the name of the exempted limited partnership and, if applicable, its secondary name;
- (d) the future effective date or time (which shall be a date or time certain) of the conversion of the exempted limited partnership to an exempted LLC if it is not to be effective upon the filing of the certificate of conversion of exempted limited partnership to exempted LLC; and
- (e) any other matters the members determine to include therein.

(5) The effective date of the conversion of the exempted limited partnership to an exempted LLC pursuant to this section shall be the date of filing with the Registrar of the certificate of conversion of exempted limited partnership to exempted LLC or any later date or time (which shall be a date or time certain) specified in the certificate of conversion of exempted limited partnership to exempted LLC if, in either case, there has been compliance with the requirements of this section, and such

(6) The conversion the exempted limited partnership to an exempted LLC pursuant to this section shall not be deemed to—

- (a) create a new legal entity;
- (b) prejudice or affect the continuity of the exempted LLC which was formerly the exempted limited partnership;
- (c) wind up or dissolve the exempted limited partnership; or
- (d) transfer the rights, privileges, powers or interests in property of the exempted limited partnership or the debts, liabilities or duties of the exempted limited partnership to the exempted LLC for any purpose of the laws of Bermuda.

(7) Upon the conversion of an exempted limited partnership which has elected to have legal personality pursuant to the Partnership Act 1902 to an exempted LLC—

- (a) the property of the exempted limited partnership continues to be the property of the exempted LLC;
- (b) the exempted LLC continues to be liable for the obligations of the exempted limited partnership;
- (c) any existing cause of action, claim or liability to prosecution in respect of the exempted limited partnership is unaffected;
- (d) any civil, criminal or administrative action or proceeding pending by or against the exempted limited partnership may be continued by or against the exempted LLC;
- (e) any conviction against, or any ruling, order or judgment in favour of or against the exempted limited partnership may be enforced by or against the exempted LLC; and
- (f) its certificate of conversion of exempted limited partnership to exempted LLC shall be deemed its certificate of formation and the provisions of this Act respecting a certificate of formation shall, mutatis mutandis, apply to a certificate of conversion of exempted limited partnership to exempted LLC.

(8) The courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the exempted LLC shall be prejudiced in pursuing in or under the laws of Bermuda a bona fide claim that existed prior to the date or time of conversion of the exempted limited partnership to an exempted LLC.

(9) In connection with the conversion of an exempted limited partnership to an exempted LLC, the members shall enter into an LLC agreement in accordance with section 5.

(10) In connection with the conversion of an exempted limited partnership to an exempted LLC, rights or securities of or interests in the exempted limited partnership may be exchanged for or converted into cash, property or rights or securities of or interests in the exempted LLC to which the exempted limited partnership has converted.

(11) No defect in the formalities leading up to the conversion of an exempted limited partnership to an exempted LLC shall affect the validity of such conversion and a certificate of filing of certificate of conversion of exempted limited partnership to exempted LLC shall be conclusive evidence of the conversion of the exempted limited partnership to an exempted LLC and the date of such conversion.

PART 13
DISSOLUTION

Modes of winding up

104 The winding up of a limited liability company may be either by the Court or voluntary and this Act, subject to any other Act, shall be applied to the winding up of a limited liability company by either of these modes.

Liability as contributories of present and past members

105 In the event of a limited liability company being wound up, every present and past member shall be liable to contribute to the assets of the limited liability company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications—

- (a) a past member shall not be liable to contribute in respect of any debt or liability of the limited liability company contracted after he ceased to be a member;
- (b) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (c) no contribution shall be required from any member exceeding the amount of any contribution that has not been made in respect of which he is liable as a present or past member;
- (d) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the limited liability company are alone made liable in respect of the policy or contract;
- (e) a sum due to any member of a limited liability company, in his character as a member, by way of distributions, profits or otherwise shall not be

deemed to be a debt of the limited liability company payable to that member in a case of competition between himself and any other creditor not a member of the limited liability company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

Definition and nature of liability of a contributory

106 (1) The term “contributory” means every person liable to contribute to the assets of a limited liability company in the event of its being wound up, and for the purposes of all proceedings prior to the final determining of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2) The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability.

Contributories in a case of death or bankruptcy of a member

107 (1) If a contributory dies either before or after he has been placed on the list of contributories, his estate representatives shall be liable in the due course of the administration to contribute to the assets of the limited liability company in discharge of his liability and shall be contributories accordingly.

(2) If the estate representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment thereof of the money due.

(3) If a contributory becomes bankrupt, either before or after he has been placed on the list of contributories—

- (a) his trustee in bankruptcy shall represent him for all the purposes of the winding up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise allow to be paid out of his assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the estate of the limited liability company; and
- (b) there may be proved against the estate of the bankrupt the estimated value of his liability to future calls as well as calls already made.

Circumstances in which a limited liability company may be wound up by the Court

108 In addition to any other provision in this or any other Act prescribing for the winding up of a limited liability company, a limited liability company may be wound up by the Court if —

- (a) the limited liability company has by resolution of the members resolved that the limited liability company be wound up by the Court;
- (b) the limited liability company does not commence its business within a year of its formation or suspends its business for a whole year;

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- (c) the limited liability company carries on any restricted business activity in contravention of section 67;
- (d) the limited liability company engages in a prohibited business activity in contravention of section 68;
- (e) the limited liability company is unable to pay its debts;
- (f) the consent by the Minister, where under this Act such consent was required, was obtained as a result of a material misstatement in the application for consent;
- (g) the Court is of the opinion that it is just and equitable that the limited liability company should be wound up; or
- (h) it is not reasonably practicable to carry on the limited liability company's business in conformity with its LLC agreement.

Definition of inability to pay debts

109 A limited liability company shall be deemed to be unable to pay its debts—

- (a) if a creditor, by assignment or otherwise, to whom the limited liability company is indebted in a sum exceeding \$500 then due has served on the limited liability company, by leaving it at the registered office of the limited liability company, a demand requiring the limited liability company to pay the sum so due and the limited liability company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) if the execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the limited liability company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Court that the limited liability company is unable to pay its debts; in determining whether a limited liability company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the limited liability company.

Provision as to applications for winding up

110 (1) An application to the Court for the winding up of a limited liability company shall be by petition, presented either by the limited liability company or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributories, or by all of those parties, together or separately, except that —

- (a) a contributory shall not be entitled to present a winding up petition unless the LLC interest in respect of which he is a contributory has been held by him and registered in his name for at least six months during the 18 months before commencement of the winding up, or the limited liability company interest has devolved on him through the death of a former holder; and

- (b) the Court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court; and
- (c) in a case falling within paragraph (g) of section 108, the winding up petition may be presented by the Registrar.

(2) When a limited liability company is being wound up voluntarily, a winding up petition may be presented by the Official Receiver as well as by any other person authorised in that behalf under this section, but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interest of the creditors or contributories.

Powers of Court on hearing petition

111 (1) On hearing a winding up petition, the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it thinks fit, but the Court shall not refuse to make a winding up order on the ground only that the assets of the limited liability company have been mortgaged to an amount equal to or in excess of those assets or that the limited liability company has no assets.

(2) Where the petition is presented by members of the limited liability company as contributories on the ground that it is just and equitable that the limited liability company should be wound up, the Court, if it is of the opinion—

- (a) that the petitioners are entitled to relief either by winding up the limited liability company or by some other means; and
- (b) that in the absence of any other remedy it would be just and equitable that the limited liability company should be wound up,

shall make a winding up order, unless it is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the limited liability company wound up instead of pursuing that other remedy.

Powers to stay or restrain proceedings against a limited liability company

112 (1) At any time after the presentation of a winding up petition, and before a winding up order has been made, the limited liability company or any creditor or contributory may, where an action or proceeding against the limited liability company is pending, apply to the Court for a stay of those proceedings.

(2) On an application being made under subsection (1), the Court may stay the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property etc. after commencement of winding up

113 (1) In a winding up by the Court, any disposition of the property of the limited liability company, including things in action, and any assignment of a limited liability company interest or alteration in the status of the members of the limited liability company, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

(2) Where any limited liability company is being wound up by the Court, any attachment, sequestration, distress or execution put in force against the estate or effects of the limited liability company after the commencement of the winding up shall be void to all intents.

Commencement of winding up by the Court

114 (1) Where, before the presentation of a petition for the winding up of a limited liability company by the Court, a resolution has been passed by the members for voluntary winding up, the winding up of the limited liability company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a limited liability company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

(3) On the making of a winding up order, a copy of the order must forthwith be forwarded by the limited liability company to the Registrar, who shall make a minute thereof in his books relating to the limited liability company.

(4) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the limited liability company except by leave of the Court and subject to such terms as the Court may impose.

(5) An order for winding up a limited liability company shall operate in favour of all the creditors and of all the contributories of the limited liability company as if made on the joint petition of a creditor and of a contributory.

Statement of limited liability company affairs to be submitted to Official Receiver

115 (1) Where the Court has made a winding up order or appointed a provisional liquidator, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the Official Receiver a statement as to the affairs of the limited liability company in the prescribed form, verified by affidavit, and showing—

- (a) the particulars of its assets, debts and liabilities;
- (b) with respect to its creditors—
 - (i) the names, residences and occupations;
 - (ii) the securities held by them respectively,
 - (iii) the dates when the securities were respectively given; and
- (c) such further or other information as may be prescribed or as the Official Receiver may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date managers of the limited liability company, or by such of the persons hereinafter in this subsection mentioned as the Official Receiver, subject to the

direction of the Court, may require to submit and verify the statement, that is to say, persons—

- (a) who are or have been managers of the limited liability company;
- (b) who have taken part in the formation of the limited liability company at any time within one year before the relevant date;
- (c) who are in the employment of the limited liability company, or have been in the employment of the limited liability company within the said year, and are in the opinion of the Official Receiver capable of giving the information required;
- (d) who are or have been within the said year officers of or in the employment of a body corporate which is, or within the said year was, an officer of the limited liability company to which the statement relates.

(3) The statement shall be submitted within 30 days from the relevant date or within such extended time as the Official Receiver or the Court may for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver or provisional liquidator, as the case may be, out of the assets of the limited liability company such costs and expenses, incurred in and about the preparation and making of the statement and affidavit, as the Official Receiver may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a default fine.

(6) Any person stating himself in writing to be a creditor or contributory of the limited liability company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and a copy thereof or extract therefrom.

(7) Any person falsely stating himself to be a creditor or contributory shall be liable on summary conviction to a fine of \$1,000 or imprisonment for a period of six months or both such fine and imprisonment.

(8) In this section the expression “the relevant date” means, in a case where a provisional liquidator is appointed, the date of his appointment and, in a case where no such appointment is made, the date of the winding up order.

Report by Official Receiver

116 (1) In a case where a winding up order is made, the Official Receiver shall, as soon as practicable after receipt of the statement to be submitted under the last foregoing section, or, in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

- (a) as to the amount of LLC interests issued and paid up, and the estimated amount of assets and liabilities; and

- (b) if limited liability company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the formation or failure of the limited liability company or the conduct of the business thereof.

(2) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the limited liability company was formed and whether in his opinion any fraud has been committed by any person in its formation, by any officer or manager of the limited liability company in relation to the limited liability company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

(3) If the Official Receiver states in any such further report as aforesaid that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 143.

Power of Court to appoint liquidators

117 (1) For the purpose of conducting proceedings in winding up a limited liability company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.

(2) The Court may on the presentation of a winding up petition or at any time thereafter and before the first appointment of a liquidator appoint a provisional liquidator who may be the Official Receiver or any other fit person.

(3) When the Court appoints a provisional liquidator, the Court may limit his powers by the order appointing him.

Provisions relating to the appointment of liquidators

118 The following provisions with respect to liquidators shall have effect on a winding up order being made—

- (a) if the Court has appointed no other provisional liquidator prior to the winding up order being made, the Official Receiver shall become the provisional liquidator and he or the provisional liquidator appointed by the Court shall continue to act as provisional liquidator until another person becomes liquidator and is capable of acting as such;
- (b) the provisional liquidator shall summon separate meetings of the creditors and contributories of the limited liability company for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the provisional liquidator;
- (c) the Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matter aforesaid, the Court shall decide the difference and make such order thereon as it thinks fit;

- (d) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the limited liability company;
- (e) the Official Receiver shall be the liquidator during any vacancy;
- (f) a liquidator shall be described when a person other than the Official Receiver is liquidator, by the style of “the liquidator”, and, where the Official Receiver is liquidator, by the style of “the Official Receiver and liquidator”, of the particular limited liability company in respect of which he is appointed and not by his individual name.

Provisions where person other than Official Receiver is appointed liquidator

119 Where, in the winding up of a limited liability company by the Court, a person other than the Official Receiver is appointed liquidator, that person—

- (a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Registrar; and
- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the limited liability company and generally such aid as may be requisite for enabling that person to perform his duties under this Act.

General provisions as to liquidators

120 (1) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(2) Where a person other than the Official Receiver is appointed liquidator, he shall receive such salary or remuneration by way of percentage or otherwise as the Court may direct, and, if more persons than one are appointed liquidators, their remuneration shall be distributed among them in such proportion as the Court directs.

(3) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(4) If more than one liquidator is appointed by the Court, the Court shall declare whether any act by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(5) Subject to section 199, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualifications.

Custody and vesting of limited liability company’s property

121 (1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control all the property and things in action to which the limited liability company is or appears to be entitled.

(2) Where a limited liability company is being wound up by the Court, the Court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the limited liability company or held by trustees on its behalf shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly, and the liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the limited liability company and recovering its property.

Powers of liquidator

122 (1) The liquidator in a winding up by the Court shall have power, with the sanction either of the Court or of the committee of inspection—

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the limited liability company;
- (b) to carry on the business of the limited liability company so far as may be necessary for the beneficial winding up thereof;
- (c) to appoint an attorney to assist him in the performance of his duties;
- (d) to pay any classes of creditors in full;
- (e) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent ascertained or sounding only in damages against the limited liability company, or whereby the limited liability company may be rendered liable;
- (f) to compromise all calls and liabilities to calls debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the limited liability company and a contributory or alleged contributory or other debtor or person apprehending liability to the limited liability company, and all questions in any way relating to or affecting the assets of the winding up of the limited liability company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect thereof.

(2) The liquidator in a winding up by the Court shall have power—

- (a) to sell the real and personal property and things in action of the limited liability company by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in parcels;
- (b) to do all acts and to execute, in the name and on behalf of the limited liability company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the limited liability company's seal;

- (c) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors;
- (d) to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the limited liability company, with the same effect with respect to the liability of the limited liability company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the limited liability company in the course of its business;
- (e) to raise on the security of the assets of the limited liability company any money required;
- (f) to take out in his official name letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the limited liability company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;
- (g) to appoint an agent to do any business which the liquidator is unable to do himself;
- (h) to do all such other things as may be necessary for winding up the affairs of the limited liability company and distributing its assets.

(3) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Exercise and control of liquidator's powers

123 (1) Subject to this Act, the liquidator of a limited liability company which is being wound up by the Court shall, in the administration of the assets of the limited liability company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any meeting of the members or by the committee of inspection, and any directions given by the creditors or contributories at any meeting of the members shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one tenth in value of the creditors or one-tenth in value of the limited liability company interests of the contributories as the case may be.

(3) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up.

(4) Subject to this Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

(5) If any person is dissatisfied by any act, omission or decision of the liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and may give such directions or make such order in the premises as it thinks just.

Books to be kept by liquidator

124 Every liquidator of a limited liability company which is being wound up by the Court shall keep, in the manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Release of liquidators

125 (1) When the liquidator of a limited liability company which is being wound up by the Court has realized all the property of the limited liability company or as much thereof as can, in his opinion, be realized without needlessly protracting the liquidation and has made the final distribution, if any, to the creditors and has adjusted the rights of members among themselves, and made a final distribution of surplus assets, if any, to members in accordance with the limited liability company agreement, or has resigned, or has been removed from his office, the Court shall on his application and on his complying with all its requirements after hearing any objection that may be urged by any creditor, contributory or person interested against the release of the liquidator either release or withhold his release.

(2) An appeal shall lie to the Court of Appeal against a decision withholding the release of a liquidator under subsection (1).

Receipts by liquidators

126 (1) Every liquidator of a limited liability company which is being wound up by the Court shall deal with the money received by him in such manner as the Court shall direct.

(2) If any liquidator at any time retains for more than 30 days a sum exceeding \$5,000 after he has received directions of the Court as to how he is to deal with the money, he shall pay interest on the sum so retained at the statutory rate of interest fixed under the Interest and Credit Charges (Regulation) Act 1975 unless the Court otherwise orders.

(3) A liquidator of a limited liability company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account.

Audit of liquidators' accounts

127 Every liquidator of a limited liability company which is being wound up by the Court shall at such times as the Court shall direct send to the Court audited accounts of his receipts and payments as liquidator.

Meetings of creditors and members to determine whether committee of inspection shall be appointed

128 (1) When a winding up order has been made by the Court, it shall be the business of the separate meetings of the creditors and contributories summoned for the purpose of determining whether or not an application should be made to the Court for appointing a liquidator in place of the Official Receiver to determine further whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of the matters aforesaid the Court shall decide the difference and make such order thereon as the Court may think fit.

Constitution and proceedings of committee of inspection

129 (1) A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories to the limited liability company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed upon by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court.

(2) The Committee shall meet at such times as it shall from time to time determine and the liquidator and any member of the committee may also call a meeting of the committee as and when either of them consider it necessary.

(3) The committee may act by a majority of its members present at a meeting but shall not act unless a majority of the committee are present.

(4) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(5) If a member of the committee becomes bankrupt or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant.

(6) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of contributories, if he represents contributories of which seven days notice has been given stating the object of the meeting.

(7) On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, reappoint the same or appoint another creditor or contributory to fill the vacancy.

(8) If the liquidator under subsection (7), having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(9) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

Powers of Registrar where no committee of inspection

130 Where in the case of a winding up there is no committee of inspection, the Registrar may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by a committee.

Power to stay winding up

131 (1) The Court may at any time after an order for winding up on the application either of the liquidator or the Official Receiver or any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) Where the Court makes an order staying the proceedings altogether, it may on hearing the liquidator, the Official Receiver, if he desires to be heard, and the interested creditors or contributories make such orders it considers desirable to enable the limited liability company to be as near as practicable as it was before the winding up order was made.

(3) On any application under this section, the Court may, before making an order, require the Official Receiver to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(4) A copy of every order made under this section shall forthwith be forwarded by the limited liability company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the limited liability company.

Settlement of list of contributories and application of assets

132 (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the limited liability company to be collected and applied in discharge of its liabilities.

(2) Where it appears to the Court, under subsection (1), that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives or liable for the debts of others.

Delivery of property to liquidator

133 The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent or officer of the limited liability company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator any money, property or books and papers in his hands to which the limited liability company is prima facie entitled.

Payment of debts due by contributory to the limited liability company and extent to which set-off allowed

134 (1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the limited liability company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) In the case of any limited liability company, when all the creditors are paid in full, any money due on any account whatever to a contributory from the limited liability company may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls

135 (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the limited liability company make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the limited liability company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call, the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Order on contributory conclusive evidence

136 (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

Appointment of special manager

137 (1) Where in proceedings the Official Receiver becomes the liquidator of a limited liability company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the limited liability company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the limited liability company other than himself, apply to the Court, and the Court may on such application appoint a special manager of the said estate or business to

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act during such time as the Court may direct, with such powers, including any of the powers of a receiver, as may be entrusted to him by the Court.

(2) The special manager shall give such security and account in such manner as the Court shall direct.

(3) The special manager shall receive such remuneration as may be fixed by the Court.

Power to exclude creditors not proving in time

138 The Court may fix a time or times within which creditors are to prove their debts or claims or be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories

139 The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

Inspection of books by creditors and members

140 (1) The Court may, at any time after making a winding up order, make such order for inspection of the books and papers of the limited liability company by creditors and contributories as the Court thinks just, and any books and papers in the possession of the limited liability company may be inspected by creditors or contributories accordingly, but not further or otherwise.

(2) Nothing in this section shall be taken as excluding or restricting any statutory rights of a government department or person acting under the authority of a government department.

Power to order costs of winding up to be made out of assets

141 The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to summon persons suspected of having property of limited liability company etc.

142 (1) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer or manager of the limited liability company or any persons known or suspected to have in his possession any property of the limited liability company or supposed to be indebted to the limited liability company, or any person whom the Court deems capable of giving information concerning the formation, trade, dealings, affairs or property of the limited liability company.

(2) The Court may examine such person on oath, concerning the matters aforesaid, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(3) The Court may require such person to produce any books and papers in his custody or power relating to the limited liability company, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse, made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examination.

Power to order public examination of officer or manager

143 (1) Where an order has been made for winding up a limited liability company by the Court, the Official Receiver may make a report under this Act stating that in his opinion any person who has taken part in the formation of the limited liability company, or any officer or manager of the limited liability company since its formation has been guilty of fraud or dishonesty or has been in default in complying with the provisions of the law relating to the limited liability companies or has shown himself to have acted in an improper, reckless or incompetent manner in relation to the limited liability company's affairs.

(2) Where a report is made to the Court under subsection (1), the Court may, after consideration of the Official Receiver's report, direct that the person, officer, manager or member referred to in the report shall attend before the Court on a day appointed for that purpose and be publicly examined as to his conduct in relation to the limited liability company.

(3) The Official Receiver shall take part in the examination either in person or by attorney.

(4) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory may also take part in the examination either personally or by attorney.

(5) The Court may put such questions to the person examined as the Court thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.

(7) A person ordered to be examined under this section shall at his own cost, before his examination, be furnished with a copy of the Official Receiver's report, and may at his own cost employ an attorney who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(8) If, under subsection (7), any such person applies to the Court to be exculpated from any charges made or suggested against him—

- (a) it shall be the duty of the Official Receiver to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Receiver to be relevant; and

- (b) if the Court, after hearing any evidence given or witnesses called by the Official Receiver, grants the application, the Court may allow the applicant such costs as in its discretion it may think fit.

(9) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(10) An examination under this section, may if the Court so directs, be held by any person appointed by the Court for that purpose and such person shall have all the powers of the Court in conducting such examination.

Powers to arrest absconding contributory

144 The Court, at any time either before or after making a winding up order, on proof of probable cause for believing that a contributory is about to quit Bermuda or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the limited liability company, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be safely kept until such time as the Court may order.

Powers of Court cumulative

145 Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory debtor of the limited liability company or the estate of any contributory or debtor, for the recovery of any call or other sums.

Delegation to liquidator of certain powers of the Court

146 (1) The Chief Justice may make rules enabling all or any of the powers and duties conferred or imposed on the Court by this Act in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls;
- (e) the fixing of a time within which debts and claims must be proved;
- (f) the use of electronic means of communication,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court.

- (2) Under subsection (1), the liquidator shall not—

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- (a) without the special leave of the Court, rectify the register of members; or
- (b) make any call without either the special leave of the Court or the sanction of the committee of inspection.

(3) Rules made under subsection (1) shall not be subject to Parliamentary scrutiny by virtue of section 6 of the Statutory Instruments Act 1977.

Early dissolution

147 (1) This section applies where an order for the winding up of a limited liability company has been made by the Court.

(2) The Official Receiver, if—

(a) he is the liquidator of the limited liability company, and

(b) it appears to him—

(i) that the realisable assets of the limited liability company are insufficient to cover the expenses of the winding up; and

(ii) that the affairs of the limited liability company do not require any further investigation,

may at any time apply to the Registrar for the early dissolution of the limited liability company.

(3) Before making that application, the Official Receiver shall give not less than 28 days' notice of his intention to do so to the limited liability company's creditors and contributories and, if there is a receiver of the limited liability company, to that receiver.

(4) With the giving of that notice the Official Receiver ceases (subject to any directions under section 148) to be required to perform any duties imposed on him in relation to the limited liability company, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2).

(5) On the receipt of the Official Receiver's application under subsection (2), the Registrar shall forthwith register it and, at the end of the period of three months beginning with the day of the registration of the application, the limited liability company shall be dissolved; however, the Minister may, on the application of the Official Receiver or any other person who appears to the Minister to be interested, give directions under section 148 at any time before the end of that period.

Consequences of notice under section 147

148 (1) Where a notice has been given under section 145(3), the Official Receiver or any creditor of or contributory of the limited liability company or the receiver of the limited liability company (if there is one) may apply to the Minister for directions under this section.

(2) The grounds on which that application may be made are—

(a) that the realisable assets of the limited liability company are sufficient to cover the expenses of the winding up;

- (b) that the affairs of the limited liability company do require further investigation; or
 - (c) that for any other reason the early dissolution of the limited liability company is inappropriate.
- (3) Directions under this section—
- (a) are directions making such provision as the Minister thinks fit for enabling the winding up of the limited liability company to proceed as if no notice had been given under section 147(3); and
 - (b) may, in the case of an application under section 147(5), include a direction deferring the date at which the dissolution of the limited liability company is to take effect for such period as the Minister thinks fit.
- (4) An appeal to the Court lies from any decision of the Minister on an application for directions under this section.
- (5) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined, within seven days after the giving of the directions or the determination of the appeal, to deliver to the Registrar for registration such a copy of the directions or determination as is prescribed.
- (6) If a person without reasonable excuse fails to deliver a copy as required by subsection (5), he is liable to a default fine of \$250 and, for continued contravention, to a daily default fine of \$100.

Dissolution of limited liability company

- 149 (1) When the affairs of a limited liability company have been completely wound up, the Court, if the liquidator makes an application in that behalf, shall make an order that the limited liability company be dissolved from the date of the order, and the limited liability company shall be dissolved accordingly.
- (2) A copy of the order shall within fourteen days from the date thereof be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the limited liability company.
- (3) If the liquidator makes default in complying with the requirements of this section, he shall be liable to a default fine.

Circumstances in which a limited liability company may be wound up voluntarily

- 150 A limited liability company shall be wound up voluntarily—
- (a) when the limited liability company resolves in a meeting of the members that the limited liability company be wound up voluntarily; or
 - (b) pursuant to section 151.

Appointment of liquidator and dissolution of limited liability company of limited duration

151 (1) A limited liability company shall be wound up voluntarily upon the expiration of the period fixed for the duration of the limited liability company by its LLC agreement or upon the occurrence of the event on the occurrence of which its LLC agreement provides that the limited liability company is to be dissolved and thereafter the limited liability company shall be dissolved in accordance with this Act.

(2) Where a limited liability company is being wound up pursuant to subsection (1), references in this Act to—

- (a) the resolution for voluntary winding up shall be deemed to be references to the expiration of the period, or the occurrence of the event, referred to in subsection (1);
- (b) section 166(1) shall be read as requiring the meeting of the creditors of the limited liability company to be summoned within 30 days of the expiration of the period, or the occurrence of the event, referred to in subsection (1);
- (c) sections 158(1), 166(5) and 180 shall not apply to the limited liability company.

(3) Subject to section 153, where a limited liability company is being wound up pursuant to subsection (1) by way of members' voluntary winding up, within 90 days after the expiration of the period, or the occurrence of the event, referred to in that subsection, the members of the limited liability company shall appoint one or more liquidators for the purpose of winding up the affairs, and distributing the assets, of the limited liability company, and may fix their remuneration, and in the absence of such an appointment within that time period, the Official Receiver shall be the liquidator.

(4) Where a limited liability company is being wound up pursuant to subsection (1) by way of a creditor's voluntary winding up and no liquidator has been appointed within 90 days after the expiration of the period, or the occurrence of the event, referred to in subsection (1), the Official Receiver shall be the liquidator.

Notice of resolution to wind up voluntarily

152 (1) Where a limited liability company is being wound up voluntarily, then within 21 days after—

- (a) the expiration of the period, if any, fixed for the duration of the limited liability company by its LLC agreement;
- (b) the occurrence of the event, if any, on the occurrence of which the LLC agreement provides that the limited liability company is to be dissolved; or
- (c) the passing of the resolution that the limited liability company be wound up voluntarily,

the limited liability company shall give notice thereof by advertisement in an appointed newspaper.

(2) If default is made in complying with this section, the limited liability company and every manager and liquidator of the limited liability company shall be liable to a default fine.

Commencement of voluntary winding up

153 A voluntary winding up shall be deemed to commence—

- (a) on the expiration of the period, if any, fixed in the LLC agreement for the duration of a limited liability company;
- (b) on the occurrence of the event, if any, on the occurrence of which it is provided in the LLC agreement that a limited liability company is to be dissolved; or
- (c) at the time of the passing of the resolution for voluntary winding up.

Effect of voluntary winding up on business and status of a limited liability company

154 (1) In case of a voluntary winding up, the limited liability company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

(2) The corporate state and corporate powers of the limited liability company shall, notwithstanding anything to the contrary in its certificate of formation or LLC agreement, continue until it is dissolved.

Avoidance of changes etc. after commencement of voluntary winding up

155 Any alteration in the status of the members of the limited liability company made after the commencement of a voluntary winding up, not being an alteration made with the sanction of the liquidator, shall be void.

Statutory declaration of solvency in case of proposal to wind up voluntarily

156 (1) Where it is proposed to wind up a limited liability company voluntarily, a manager or member shall make a statutory declaration to the effect that he has formed the opinion that the limited liability company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act unless—

- (a) it is made within five weeks immediately preceding—
 - (i) the expiration of the period, if any, fixed in the LLC agreement for the duration of limited liability company;
 - (ii) the occurrence of the event, if any, on the occurrence of which it is provided in the LLC agreement that the limited liability company is to be dissolved; or

- (iii) the date of the passing of the resolution for voluntarily winding up, and is delivered to the Registrar for registration before that date; and
- (b) it embodies either—
 - (i) a statement of the limited liability company's assets and liabilities as at the latest practicable date before the making of the declaration; or
 - (ii) a statement to the effect that the opinion of the person making the declaration was based on an indemnity, undertaking or pledge made in favour of the limited liability company in respect of its liabilities.

(3) Any person making a declaration under this section without having any reasonable grounds for the opinion that the limited liability company will be able to pay its debts in full within the period specified in the declaration, shall be liable conviction on indictment to imprisonment for a term of six months or to a fine of \$2,500 or to both; and if the limited liability company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration it shall be presumed until the contrary is shown that the person did not have reasonable grounds for his opinion.

(4) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in this Act referred to as "a creditors' voluntary winding up".

Provisions applicable to members' winding up

157 The provisions contained in sections 158 to 164 shall, subject to the provisions of section 164, apply in relation to a members' voluntary winding up.

Power of limited liability company to appoint and fix remuneration of liquidators

158 (1) The members shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the limited liability company, and may fix their remuneration.

(2) On the appointment of a liquidator all the powers of any managers of the limited liability company shall cease, except so far as the members or the liquidator sanction the continuance thereof.

Power to fill vacancy in office of liquidator

159 (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the members, the members may, subject to any arrangement with the limited liability company's creditors, fill the vacancy.

(2) For that purpose, a meeting of the members may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in the manner provided by this Act or by the LLC agreement, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Power of liquidator to accept shares etc. as consideration for sale of property of limited liability company

160 (1) Where a limited liability company is proposed to be, or is in the course of being, wound up voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to a body corporate, in this section called “the transferee company”, the liquidator of the limited liability company, in this section called “the transferor LLC”, may—

- (a) with the sanction of a resolution of that limited liability company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, LLC interests, policies or other like interests in the transferee company for distribution in accordance with the LLC agreement of the transferor LLC; or
- (b) enter into any other arrangement whereby in lieu of distributing cash, shares, LLC interests, policies or other like interests or in addition thereto, the profits or any other benefits from the transferee company are to be distributed in accordance with the LLC agreement of the transferor LLC.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor LLC.

(3) If any member of the transferor limited liability company who did not vote in favour of the resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the limited liability company within seven days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his LLC interest at a price to be determined by agreement or by arbitration.

(4) If the liquidator elects to purchase the member’s LLC interest, the purchase money must be paid before the limited liability company is dissolved and be raised by the liquidator in such manner as may be determined by resolution.

(5) A resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but if an order is made within a year for winding up the limited liability company by the Court, the resolution shall not be valid unless sanctioned by the Court.

Duty of liquidator to call creditors’ meeting in case of insolvency

161 (1) If the liquidator is at any time of the opinion that the limited liability company will not be able to pay its debts in full within the period stated in the declaration under section 156, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the limited liability company.

(2) If the liquidator fails to comply with this section, he shall be liable to a default fine not exceeding \$250.

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Duty of liquidator to call meeting of the members at end of each year

162 (1) Subject to section 164, in the event of the winding up continuing for more than one year, the liquidator shall summon a meeting of the members of the limited liability company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a default fine not exceeding \$50.

Final meeting and dissolution: members' voluntary winding up

163 (1) Subject to section 164, as soon as the affairs of the limited liability company are fully wound up, the liquidator shall make up an account of the winding up, showing how the winding up has been conducted and the property has been disposed of, and thereupon shall call a meeting of the members of the limited liability company in accordance with its LLC agreement for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement in an appointed newspaper, specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the meeting, the liquidator shall notify the Registrar that the limited liability company has been dissolved and the Registrar shall record that fact and the date of the dissolution in the appropriate register.

(4) If a quorum, under subsection (3), is not present at the meeting the liquidator, in lieu of notifying the Registrar as here before mentioned, shall notify him that the meeting was duly summoned and that no quorum was present thereat and on such notification the requirements of this subsection shall be deemed to have been complied with.

(5) If the liquidator fails to call a meeting of the members of the limited liability company as required by this section or fails to comply with the requirements of subsection (3), he shall be liable to a default fine.

Alternative provisions as to annual and final meetings in case of insolvency

164 (1) Where section 161 has effect, sections 172 and 173 shall apply to the winding up, as if the winding up were a creditors' voluntary winding up.

(2) The liquidator shall not be required to summon a meeting of creditors under section 171 at the end of the first year from the commencement of the winding up, unless the meeting held under section 179, is held more than three months before the end of the year.

Provisions applicable to creditors' winding up

165 The provisions contained in sections 166 to 173 shall apply in relation to a creditors' voluntary winding up.

Meeting of creditors

166 (1) The limited liability company shall cause a meeting of the creditors of the limited liability company to be summoned for the day, or the next day following the day, on which there is to be held the meeting of the members at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent to the creditors simultaneously with the sending of the notices of the meeting of the members.

(2) The limited liability company shall cause notice of the meeting of creditors to be advertised in an appointed newspaper on at least two occasions.

(3) The managers of the limited liability company shall—

(a) cause a full statement of the position of the limited liability company's affairs together with a list of the creditors of the limited liability company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at such meeting.

(4) It shall be the duty of the person appointed under subsection (3)(b) to attend the meeting and preside thereat.

(5) If the meeting of the members at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of subsection (1) shall have effect as if it has been passed immediately after the passing of the resolution for winding up the limited liability company.

(6) If default is made—

(a) by the limited liability company in complying with subsections (1) and (2); or

(b) by the managers or members of the limited liability company in complying with subsection (3) or (4),

such limited liability company, managers or members, as the case may be, shall be liable to a default fine of \$500, and in the case of default by the limited liability company, every officer or manager of the limited liability company, who is in default shall be liable to like penalty.

Appointment of liquidator

167 (1) The creditors and the members at their respective meetings mentioned in the section 166 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the limited liability company, and if the creditors and the members nominate different persons, the person nominated by the creditors shall be liquidator, and if no person is nominated by the creditors the person, if any, nominated by the members shall be liquidator.

(2) In the case, under subsection (1), of different persons being nominated, any manager, member or creditor of the limited liability company may within seven days after

the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the members shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

Appointment of committee of inspection

168 (1) The creditors at the meeting to be held in pursuance of section 166 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons, and if such a committee is appointed the members may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in a meeting of the members, appoint such number of persons as they think fit to act as members of the committee not exceeding five in number.

(2) The creditors may, under subsection (1), if they think fit, resolve that all or any of the persons so appointed by the members ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to this section and to general rules, section 129 except subsection (1), shall apply with respect to a committee of inspection appointed under this section as it applies with respect to a committee of inspection appointed in a winding up by the Court.

Fixing of liquidator's remuneration and cesser of the powers of officers and managers

169 (1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all the powers of the officers and managers of the limited liability company shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors, sanction the continuance thereof.

Power to fill vacancy in office of liquidator

170 If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator, other than a liquidator appointed by, or by the direction of, the Court, the creditors may fill the vacancy.

Application of section 160 to a creditors' voluntary winding up

171 Section 160 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under the said section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

Duty of liquidator to call meetings of limited liability company and creditors at end of each year

172 (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a meeting of the members of the limited liability company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within three months from the end of the year or such longer period as the Registrar may allow, and shall lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(2) If the liquidator fails to comply with this section, he shall be liable to a default fine not exceeding \$50.

Final meeting and dissolution

173 (1) As soon as the affairs of the limited liability company are fully wound up, the liquidator shall make an account of the winding up showing how the winding up has been conducted and the property of the limited liability company has been disposed of, and thereupon shall call a meeting of the members of the limited liability company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement in an appointed newspaper specifying the time, place and object thereof, and published one month at least before the meeting.

(3) Within one week after the date of the meetings, or, if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copy is not sent or the return is not made in accordance with this subsection the liquidator shall be liable to a default fine.

(4) Under subsection (3), if a quorum is not present at either such meeting, the liquidator shall—

- (a) in lieu of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present at that meeting; and
- (b) upon such a return being made the provisions of this subsection as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(5) The Registrar on receiving the account and, in respect of each such meeting, either of the returns hereinbefore mentioned, shall forthwith register them, and on the expiration of three months from the registration thereof the limited liability company shall be deemed to be dissolved.

(6) The Court may, under subsection (5), on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the

date at which the dissolution of the limited liability company is to take effect for such time as the Court thinks fit.

(7) It shall be the duty of the person on whose application an order of the Court under this section is made, within seven days after the making of the order, to deliver to the Registrar an office copy of the order for registration, and if the person fails to do so he shall be liable to a default fine.

(8) If the liquidator fails to call a meeting of the members of the limited liability company or a meeting of the creditors as required by this section, he shall be liable to a default fine of \$250.

Provisions applicable to every winding up

174 Sections 175 to 182 shall apply to every winding up whether a members' or a creditors' winding up.

Distribution of property of limited liability company

175 Subject to this Act as to preferential payment, the property of a limited liability company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu*, and, subject to such application, shall, unless the limited liability company agreement otherwise provides be distributed among the members according to their rights and interests in the limited liability company.

Powers and duties of liquidator in voluntary winding up

176 (1) The liquidator may—

(a) in the case of—

(i) a members' voluntary winding up, with the sanction of a resolution of the members and;

(ii) in the case of a creditors' voluntary winding up, with the sanction of the Court or;

(iii) the committee of inspection or if there is no such committee a meeting of the creditors,

exercise any of the powers given by paragraphs (d), (e) and (f) of subsection (1) of section 122 to a liquidator in a winding up by the Court;

(b) without sanction, exercise any of the other powers by this Act given to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories;

(d) exercise the power of the Court to make calls;

(e) summon meetings of the members of the limited liability company for the purpose of obtaining the sanction of the members by resolution or for any other purpose he may think fit.

(2) The liquidator shall pay the debts of the limited liability company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

Power of Court to appoint and remove liquidator in voluntary winding up

177 (1) If for any cause whatever there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment

178 (1) The liquidator shall, within 21 days after his appointment, publish in an appointed newspaper and deliver to the Registrar for registration a notice of his appointment.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a default fine.

Arrangement when binding on creditors

179 (1) Any arrangement entered into between a limited liability company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the limited liability company if sanctioned by a resolution of the members and on the creditors if acceded to by three fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Liquidator's power to stay voluntary winding up

180 (1) The liquidator of a limited liability company may at any time after he has been appointed stay the winding up either altogether or for a limited time if he is satisfied that such a stay is in the best interests of the contributories or the creditors.

(2) The liquidator shall three weeks prior to staying the winding up of a limited liability company under subsection (1) by notice publish in an appointed newspaper his intentions and his reasons for so doing and shall give notice of such intention to the Registrar.

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(3) The Official Receiver or any contributory or creditor may within three weeks of the publication of a notice under subsection (2) apply to the Court under section 181 for an order requiring the liquidator to continue the winding up proceedings.

(4) When a liquidator stays the winding up of a limited liability company altogether, he shall, after the period allowed for an application under subsection (3) has expired, take such steps as he considers desirable to enable the limited liability company to be as near as practicable as it was before the resolution to wind up the limited liability company was made.

Power to apply to Court to have questions determined or powers exercised

181 (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a limited liability company, or to exercise as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the limited liability company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the limited liability company, or otherwise as may be prescribed to the Registrar who shall make a minute of the order in his books relating to the limited liability company.

Costs of voluntary winding up

182 All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the limited liability company in priority to all other claims.

Saving for rights of creditors and contributories

183 The winding up of a limited liability company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Debts of all descriptions may be proved

184 In every winding up, subject in the case of insolvent limited liability companies to the rules of bankruptcy as applied by this Act, all debts payable on a contingency, and all claims against the limited liability company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the limited liability company, a just estimate being made so far as possible, of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Application of bankruptcy rules in winding up of insolvent limited liability companies
185 In the winding up of an insolvent limited liability company, the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and receive distributions out of the assets of the limited liability company may come in under the winding up and make such claims against the limited liability company as they respectively are entitled to by virtue of this section.

Preferential payments

186 (1) In a winding up, there shall be paid in priority to all other debts—

- (a) all taxes owing to the Government and rates owing to a municipality at the relevant date;
- (b) all wages or salary, whether or not earned wholly or in part by way of commission or whether payable for time or piece work of any employee of the limited liability company in respect of services rendered to the limited liability company during four months next before the relevant date;
- (c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of the winding up order or resolution;
- (d) unless the limited liability company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation or of merger with another limited liability company, all amounts due in respect of contributions payable during the twelve months next before the relevant date by the limited liability company as the employer of any persons under the Contributory Pensions Act 1970 or any contract of insurance;
- (e) unless the limited liability company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation or of merger with another limited liability company, or unless the limited liability company has, at the commencement of the winding up, under a contract with insurers capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act 1965, being amounts which have accrued before the relevant date.

(2) Notwithstanding anything in paragraph (b) of the foregoing subsection, the sum to which priority is to be given under subsection (1)(b) shall not, in the case of any one claimant, exceed \$2,500.

(3) Where, under subsection (2), a claimant under the said paragraph (b) has entered into a contract for the payment of a portion of his wages in a lump sum or for the payment of a gratuity at the end of his hiring, he shall have priority in respect of the whole

of each sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(4) Where any compensation under the Workmen's Compensation Act 1965, is a weekly payment, the amount due in respect thereof shall, for the purposes of paragraph (e) of subsection (1) be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(5) Where any payment has been made—

- (a) to any employee of a limited liability company, on account of wages or salary; or
- (b) to any such employee or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(6) The foregoing debts shall—

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the limited liability company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the limited liability company, and be paid accordingly out of any property comprised in or subject to that charge.

(7) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by paragraph (d) of subsection (1) formal proof thereof shall not be required.

(8) In the event of a landlord or other person distraining or having distrained on any goods or effects of the limited liability company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof, except that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(9) For the purpose of this section—

- (a) any remuneration in respect of a period of holiday or absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the limited liability company during that period;

- (b) the expression “accrued holiday remuneration” includes in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment, including any order made or direction given under an Act, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the limited liability company continued until he became entitled to be allowed the holiday;
- (c) the expression “the relevant date” means—
 - (i) in the case of a limited liability company ordered to be wound up compulsorily, the date of the appointment, or first appointment, of a provisional liquidator, or, if no such appointment was made, the date of the winding up order, unless in either case the limited liability company had commenced to be wound up voluntarily before that date; and
 - (ii) in any case where the foregoing subparagraph does not apply, means the date of the passing of the resolution for the winding up of the limited liability company.

Fraudulent preference

187 (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a limited liability company within six months before the commencement of its winding up which, had it been made or done by or against an individual within six months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the limited liability company being wound up be deemed a fraudulent preference of its creditors and be invalid accordingly.

(2) Any conveyance or assignment by a limited liability company of all its property to trustees for the benefit of all its creditors shall be void to all intents.

Liability and rights of certain fraudulently preferred persons

188 (1) Where anything made or done is void under section 187 as a fraudulent preference of a person interested in property mortgaged or charged to secure the limited liability company's debt, then, without prejudice to any rights or liabilities arising apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debts to the extent of the charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the limited liability company's debts was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising

between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

(4) Subsection (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.

Effect of floating charge

189 Where a limited liability company is being wound up, a floating charge on the undertaking or property of the limited liability company created within 12 months of the commencement of the winding up shall, unless it is proved that the limited liability company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the limited liability company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the statutory rate fixed under the Interest and Credit Charges (Regulation) Act 1975.

Disclaimer of onerous property

190 (1) The liquidator of a limited liability company may with the leave of the Court disclaim any property belonging to the limited liability company whether real or personal including any right of action or right under a contract which in his opinion is onerous for the limited liability company to hold or is unprofitable or unsaleable.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the limited liability company, and the property of the limited liability company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the limited liability company and the property of the limited liability company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(5) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the limited liability company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Restriction of rights of creditor as to execution or attachment in case of limited liability company being wound up

191 (1) Where a creditor has issued execution against the goods or lands of a limited liability company or has attached any debt due to the limited liability company, and the limited liability company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the limited liability company unless he has completed the execution or attachment before the commencement of the winding up, except that—

- (a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall for the purpose of the foregoing provision, be substituted for the date of the commencement of the winding up;
- (b) a person who purchases in good faith under a sale by the Provost Marshal any goods of a limited liability company on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and
- (c) the rights conferred by this subsection on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court may think fit.

(2) For the purposes of this section, an execution against goods shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against land shall be deemed to be completed by seizure or by the appointment of a receiver.

(3) In this and the next section, the expression “goods” includes all chattels personal, and the expression Provost Marshal includes any officer charged with the execution of a writ or other process.

Duties of provost marshal as to goods taken in execution

192 (1) Subject to the provisions of subsection (3), where any goods of a limited liability company are taken in execution, and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Provost Marshal that a provisional liquidator has been appointed or that a winding up order has been made or that a resolution for voluntary winding up has been passed, the Provost Marshal shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part thereof for the purpose of satisfying that charge.

(2) Subject to the provisions of subsection (3), where under an execution in respect of a judgment for a sum exceeding \$500 the goods of a limited liability company are sold or money is paid in order to avoid sale, the Provost Marshal shall deduct the costs of the execution from the proceeds of the sale or the money paid and retaining the balance for 14 days, and if within that time notice is served on him of a petition for the winding up of the limited liability company having been presented or of a meeting having been called at which

there is to be proposed a resolution for the voluntary winding up of the limited liability company and an order is made or a resolution is passed, as the case may be, for the winding up of the limited liability company, the Provost Marshal shall pay the balance to the liquidator, who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

Offences by officers and managers of limited liability companies in liquidation

193 (1) Any person, being a past or present officer or manager of a limited liability company which at the time of the commission of the alleged offence is being wound up, whether by the Court or voluntarily, or is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up who—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the limited liability company, and how and to whom and for what consideration and when the limited liability company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the limited liability company;
- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the limited liability company as is in his custody or under his control, and which he is required by law to deliver up;
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the limited liability company and which he is required by law to deliver up;
- (d) within 12 months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the limited liability company to the value of \$300 or upwards, or conceals any debt due to or from the limited liability company;
- (e) within 12 months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the limited liability company to the value of \$50 or upwards;
- (f) makes any material omission in any statement relating to the affairs of the limited liability company;
- (g) knowing or believing that a false debt has been proved by any person under winding up, fails for the period of a month to inform the liquidator thereof;
- (h) after the commencement of the winding up, prevent the production of any book or paper affecting or relating to the property or affairs of the limited liability company;
- (i) within 12 months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to

the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the limited liability company;

- (j) within 12 months next before the commencement of the winding up or at any time thereafter, makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the limited liability company;
- (k) within 12 months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the limited liability company;
- (l) after the commencement of the winding up or at any meeting of the creditors of the limited liability company within 12 months next before the commencement of the winding up, attempts to account for any part of the property of the limited liability company by fictitious losses or expenses;
- (m) has within 12 months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the limited liability company on credit for which the limited liability company does not subsequently pay for;
- (n) within 12 months next before the winding up or any time thereafter, under false pretence that the limited liability company is carrying on its business, obtains in credit, for or on behalf of the limited liability company, any property which the limited liability company does not subsequently pay for;
- (o) within 12 months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the limited liability company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or disposing is in the ordinary way of the business of the limited liability company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the limited liability company or any of them to an agreement with reference to the affairs of the limited liability company or to the winding up,

commits an offence.

(2) A person convicted of any of the offences mentioned respectively in paragraphs (m), (n) and (o) of subsection (1), shall be liable—

- (a) on conviction or indictment to imprisonment for a term of five years, or on summary conviction to imprisonment for a term of 12 months; and
- (b) in the case of any other offence, he shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of 12 months.

(3) It shall be a good defence to a charge under any of paragraphs (a), (b), (c), (d), (f), (m), (n) and (o) of subsection (1), if the accused proves that he had no intent to defraud, and to a charge under any of paragraphs (h), (i) and (j), if he proves that he had no intent to conceal the state of affairs of the limited liability company or to defeat the law.

(4) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (o) of subsection (1), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be liable to be punished in the same way as if he had committed an offence under such paragraph.

Penalty for falsification of books

194 If any officer or manager of a limited liability company being wound up, destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the limited liability company with intent to defraud or deceive any person, he shall be liable on conviction on indictment to imprisonment for a term of five years.

Frauds by officers and managers of limited liability companies which have gone into liquidation

195 If any person, being at the time of the commission of the alleged offence an officer or a manager of a limited liability company, which is subsequently ordered to be wound up by the Court or subsequently passes a resolution for voluntary winding up,—

- (a) has by false pretence or by means of any other fraud induced any person to give credit to the limited liability company;
- (b) with intent to defraud creditors of the limited liability company, has made or caused to be made any transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the limited liability company; or
- (c) with intent to defraud creditors of the limited liability company, has concealed or removed any part of the property of the limited liability company since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against the limited liability company,

shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of 12 months.

Persons concerned responsible for fraudulent trading

196 (1) If in the course of the winding up of a limited liability company it appears that any business of the limited liability company has been carried on with intent to defraud creditors of the limited liability company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the Official Receiver, or the liquidator or any creditor or contributory of the limited liability company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of

liability, for all or any of the debts or other liability of the limited liability company as the Court may direct.

(2) On the hearing of an application under this subsection, the Official Receiver or the liquidator, as the case may be, may himself give evidence or call witnesses.

(3) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the limited liability company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the limited liability company held by or vested in him, or any limited liability company or person on his behalf, or any person claiming as assignee from or through the person liable or any limited liability company or person acting on his behalf, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

(4) For the purpose of subsection (3), the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a limited liability company is carried on with such intent or for such purpose as is mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable on conviction on indictment to imprisonment for a term of two years or to a fine of \$2,500, or to both.

(6) This section shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under subsection (1) is made unless the person concerned pays the debts and liabilities which the Court in the declaration has directed that he should pay within a space of three weeks of the declaration he shall be deemed to have been guilty of an act of bankruptcy under section 3 of the Bankruptcy Act 1989.

Power of Court to assess damages against delinquent officers or managers

197 (1) If in the course of winding up a limited liability company it appears that any person who has taken part in the formation of the limited liability company or any liquidator of the limited liability company, has misapplied or retained or become liable or accountable for any money or property of the limited liability company, or been guilty of any misfeasance or breach of trust in relation to the limited liability company, the Court may, on the application of the Official Receiver, or of the liquidator, or of any creditor or contributory, examine the conduct of the manager, officer, member or liquidator, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the limited liability company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) When an order is made under this section, if the person concerned fails to comply with the order within the space of three weeks of it being served upon him or within such time, or such further time that the Court may allow, unless he satisfies the Court that he has a counter claim, setoff or cross demand which equals or exceeds the amount he has been ordered to pay he shall be guilty of an act of bankruptcy for the purposes of section 3 of the Bankruptcy Act 1989.

Prosecution of delinquent members of limited liability company

198 (1) If it appears to the Court in the course of a winding up by the Court that any past or present officer, manager or member of the limited liability company has been guilty of any offence in relation to the limited liability company for which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator to refer the matter to the Director of Public Prosecutions.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, manager or member of the limited liability company has been guilty of any offence in relation to the limited liability company for which he is criminally liable, he shall forthwith report the matter to the Director of Public Prosecutions and shall furnish him with such information as he shall require and give him such access to and facilities for inspecting and taking copies of any documents in his possession or control relating to the matter in question.

Body corporate disqualified for appointment as liquidator

199 A body corporate, unless empowered so to do by an incorporating Act, shall not be qualified for appointment as liquidator of a limited liability company whether in a winding up by the Court or in a voluntary winding up and—

- (a) any appointment made in contravention of this provision shall be void; and
- (b) any body corporate which acts in contravention of this section shall be liable to a default fine not exceeding \$500.

Enforcement of duty of liquidator to make returns etc.

200 (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the limited liability company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

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(3) Nothing in this section shall be taken to prejudice the operation of any provision imposing penalties on a liquidator in respect of any such default as aforesaid.

Notification that a limited liability company is in liquidation

201 (1) Where a limited liability company is being wound up, whether by the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the limited liability company or a liquidator of the limited liability company, or a receiver of the property of the limited liability company, being a document on or in which the name of the limited liability company appears, shall contain a statement that the limited liability company is being wound up.

(2) If default is made in complying with this section, the limited liability company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer or manager of the limited liability company any liquidator of the limited liability company and any receiver of the property of the limited liability company, shall be liable to a default fine of \$100.

Exemption of certain documents from stamp duty

202 (1) When a limited liability company is being wound up by the Court or when a limited liability company is the subject of a creditors' voluntary winding up—

- (a) every assurance relating solely to freehold property, or to any estate, right or interest in, any real or personal property, which forms part of the assets of the limited liability company and which, after the execution of the assurance, either at law or in equity, is or remains part of the assets of the limited liability company; and
- (b) every power of attorney, proxy paper, writ, order, certificate, bond or other instrument or writing relating solely to the property of any limited liability company which is being wound up, or to any proceeding under any such winding up, shall be exempt from duties chargeable under the enactments relating to stamp duties.

(2) In this section the expression "assurance" includes deed, conveyance, assignment and surrender.

Books of limited liability company to be evidence

203 Where a limited liability company is being wound up, all books and papers of the limited liability company and of the liquidators shall, as between the contributors of the limited liability company, be prima facie evidence of the truth of all matters purporting to be therein recorded.

Disposal of books and papers of limited liability company

204 (1) When a limited liability company has been wound up and is about to be dissolved, the books and papers of the limited liability company and of the liquidators may be disposed of as follows, that is say—

- (a) in the case of a winding up by the Court, in such way as the Court directs;

- (b) in the case of a members' voluntary winding up, in such way as the members by resolution direct, and, in the case of a creditors' voluntary winding up, in such a way as the committee of inspection or, if there is no such committee, as the creditors of the limited liability company may direct.

(2) No responsibility shall rest on the limited liability company, the liquidator or any person to whom the custody of the books and papers has been committed, by reason only of any book or paper not being forthcoming to any person claiming to be interested therein provided that the limited liability company, liquidator or person, as the case may be, retains custody of such books and papers—

- (a) in the case of a limited liability company dissolved pursuant to section 157, for a period of at least ten years;
- (b) in the case of a limited liability company dissolved pursuant to section 205, for a period of at least 20 years; and
- (c) in any other case, for a period of at least two years, commencing on the date of the dissolution of the limited liability company.

(3) The Minister may make rules for enabling the Registrar to prevent, for such period from the dissolution of the limited liability company, as the Registrar thinks proper, the destruction of the books and papers of a limited liability company which has been wound up, and for enabling any creditor or contributory of the limited liability company to make representations to the Registrar and to appeal to the Court from any direction which may be given by the Registrar in the matter, provided that such period shall not exceed—

- (a) in the case of a limited liability company dissolved pursuant to section 157, ten years;
- (b) in the case of a limited liability company dissolved pursuant to section 205, 20 years; and
- (c) in any other case, two years, commencing on the date of the dissolution of the limited liability company.

(4) If any person acts in contravention of any rules made for the purposes of this section or of any direction of the Registrar thereunder, he shall be liable to a default fine of \$500.

(5) Any rules made under subsection (3) shall be subject to negative resolution procedure.

Information as to pending liquidations

205 (1) If where a limited liability company is being wound up the winding up is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar such particulars as the Registrar may require with respect to the proceedings in and position of the liquidation.

(2) If a liquidator fails to comply with this section, he shall be liable to a default fine.

(3) This section shall not apply in the case of a members' voluntary winding up of a limited liability company.

Unclaimed assets to be paid into consolidated fund

206 (1) If, where a limited liability company is being wound up, it appears either from any statement sent to the Registrar under section 205 or otherwise that a liquidator has in his hands or under his control—

- (a) any money representing unclaimed or undistributed assets of the limited liability company which have remained unclaimed or undistributed for six months after the date of their receipt; or
- (b) any money held by the limited liability company in trust in respect of distributions or other sums due to any person in accordance with the LLC agreement of the limited liability company,

the liquidator shall forthwith pay the said money to the Accountant General who shall pay it into the Consolidated Fund and the liquidator shall be entitled to a receipt for the money so paid which shall be an effectual discharge to him in respect thereof.

(2) Any person claiming to be entitled to any money paid into the Consolidated Fund in pursuance of this section may apply to the Accountant General for payment thereof, and the Accountant General, on receipt of a certificate by the liquidator that the person claiming is entitled, may make an order for the payment to that person of the sum due.

(3) Any person dissatisfied with the decision of the liquidator or the Accountant General in respect of a claim made under this section may appeal to the Court.

Appointment of commissioner to take evidence

207 (1) The Court may appoint a commissioner for the purpose of taking evidence under this Act and may refer the whole or any part of the examination of any witnesses under this Act to any person it has appointed as commissioner.

(2) Every commissioner shall have in relation to any matter referred to him all the powers of the Court to summon and to examine witnesses, to require the delivery of documents, to punish defaults by witnesses, and to allow their costs and expenses to witnesses.

(3) Any examination so taken shall be returned or reported to the Court.

The swearing of affidavits etc.

208 (1) Any affidavit or declaration required to be sworn under or for the purposes of this Act may be sworn in Bermuda or elsewhere before any Court or person lawfully authorised to take and receive affidavits or before any of Her Majesty's consuls, vice consuls or high commissioners.

(2) All courts, judges, justices, commissioners and persons acting judicially shall for the purposes of subsection (1) take judicial notice of the seal or stamp or signature of any court, judge or person in Bermuda and of any court, consul, vice consul or high commissioner elsewhere but may in its discretion require the seal or stamp of any other person to be authenticated by a court, consul, vice consul or high commissioner or require evidence that the person is lawfully authorised to seal and receive affidavits.

Power of Court to declare dissolution of limited liability company void

209 (1) Where a limited liability company has been dissolved the Court may—

(a) in the case of a dissolution pursuant to section 163, at any time not later than ten years from the date of such dissolution; and

(b) in any other case, at any time not later than two years from such date,

on an application being made for the purpose by the liquidator of the limited liability company or by any other person who appears to the Court to be interested, make an order declaring the dissolution to have been void.

(2) It shall be the duty of the person on whose application the order was made, within 7 days after the making of the order, or such further time as the Court may allow, to deliver to the Registrar for registration a copy of the order, and if that person fails so to do he shall be liable to a default fine.

(3) Where an order is made and registered pursuant to this section, the limited liability company shall be deemed to have continued in existence as if it had not been dissolved.

(4) Where the Court makes an order under subsection (1), the Court may make such consequential orders, or impose such terms and conditions, as to the Court may deem appropriate in the circumstances.

Registrar may strike defunct limited liability company off register

210 (1) Where the Registrar has reasonable cause to believe that a limited liability company is not carrying on business or is not in operation, he may send to the limited liability company a letter inquiring whether the limited liability company is carrying on business or is in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within 14 days after the expiration of the month send to the limited liability company a registered letter referring to the first letter, and stating that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in an appointed newspaper with a view to striking the name of the limited liability company off the register.

(3) If the Registrar either receives an answer to the effect that the limited liability company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in an appointed newspaper, and send to the limited liability company by post, a notice that at the expiration of three months from the date of that notice the name of the limited liability company

mentioned therein will, unless cause is shown to the contrary, be struck off the register and the limited liability company will be dissolved.

(4) If, in any case where a limited liability company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the limited liability company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in an appointed newspaper and send to the limited liability company or the liquidator if any, a like notice as is provided in the last foregoing subsection.

(5) At the expiration of the time mentioned in subsection (3), the Registrar may, unless cause to the contrary is previously shown by the limited liability company, strike its name off the register, and shall publish notice thereof in an appointed newspaper, and on such publication the limited liability company shall be dissolved, except that—

- (a) the liability, if any, of every officer, manager and member of the limited liability company shall continue and may be enforced as if the limited liability company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the Court to wind up a limited liability company the name of which has been struck off the register.

(6) If a limited liability company or any member or creditor thereof feels aggrieved by the limited liability company having been struck off the register, the Court on an application made by the limited liability company or member or creditor before the expiration of 20 years from the publication of the notice aforesaid may, if satisfied that the limited liability company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the limited liability company be restored to the register, order the name of the limited liability company to be restored to the register, and upon a copy of the order being delivered to the Registrar for registration the limited liability company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seems just for placing the limited liability company and all other persons in the same position as nearly as may be as if the name of the limited liability company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a limited liability company may be addressed to the limited liability company at its registered office, or, if no office has been registered to the care of some officer or manager of the limited liability company whose name and address are known to the Registrar, may be sent to each of the persons who was originally party to the LLC agreement, addressed to him at the address mentioned in the LLC agreement.

Property of dissolved limited liability company to be bona vacantia

211 Where a limited liability company is dissolved, all property and rights whatsoever vested in or held on trust for the limited liability company immediately before its dissolution, including leasehold property but not including property held by the limited liability company on trust for any other person, shall, subject and without prejudice to any order

which may at any time be made by the Court under the two last foregoing sections, be deemed to be bona vacantia and shall accordingly belong to the Crown.

Power of Crown to disclaim title to property vesting under section 211

212 (1) Where any property vests in the Crown under the section 211, the Crown's title thereto under that section may be disclaimed by a notice signed by the Attorney General.

(2) When a notice of disclaimer is executed under this section as respects any property, that property shall be deemed not to have been vested in the Crown under section 211 and section 190 shall apply to the property as if it had been disclaimed under subsection (1) of that section.

Investment of surplus funds

213 (1) When the cash balance standing to the credit of the account of any limited liability company in liquidation is in excess of the amount which, in the opinion of the liquidator is required for the time being to answer demands in respect of the limited liability company's debts, the liquidator may invest the amount not so required in investments that the committee of inspection authorises, or in the absence of a committee of inspection that the Court authorises.

(2) In the case of a winding up by the Court the liquidator shall not make any investment under subsection (1) without the sanction of the Court; in the case of a members' or creditors' voluntary winding up, the liquidator shall not act without the sanction of the committee of inspection or when there is no committee of inspection without the sanction of a meeting of the members or a meeting of creditors, as the case may be.

Disqualification of undischarged bankrupt from acting as receiver

214 (1) If any person being an undischarged bankrupt under the laws of any country acts as receiver of the property of a limited liability company on behalf of debenture holders, he shall, subject to the following subsection, be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$1,000 or both.

(2) The foregoing subsection shall not apply to a receiver where he acts under an appointment made by order of the Court.

Receivers appointed out of Court

215 (1) A receiver of the property of a limited liability company appointed under the powers contained in any instrument may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his functions and on any such application the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as the Court thinks just.

(2) A receiver of the property of a limited liability company appointed under the powers contained in any instrument shall, to the same extent as if he had been appointed by order of a Court, be personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and entitled in respect of that liability to indemnity out of the assets.

(3) Nothing in subsection (2) shall be taken as limiting any right to indemnity which he would have apart from this subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

Notification that receiver appointed

216 (1) Where a receiver of the property of a limited liability company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the limited liability company, the receiver or the liquidator of the limited liability company, being a document on or in which the name of the limited liability company appears, shall contain a statement that a receiver has been appointed.

(2) If default is made in complying with the requirements of this section, the limited liability company and any of the following persons who knowingly and wilfully authorises or permits the default namely, any officer or manager of the limited liability company any liquidator of the limited liability company and any receiver, shall be liable to a default fine of \$100.

Power of Court to fix remuneration on application of liquidator

217 The Court may, on an application made to the Court by the liquidator of a limited liability company, by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver of the property of the limited liability company and may from time to time, on an application made either by the liquidator or by the receiver, vary or amend any order so made.

Provisions as to information where receiver appointed

218 (1) Where a receiver of the whole or substantially the whole of the property of the limited liability company (hereafter in this section and in section 219 referred to as “the receiver”) is appointed on behalf of the holders of any debentures of the limited liability company secured by a floating charge, then subject to the provisions of this and the next following section—

- (a) the receiver shall forthwith send to the limited liability company notice of his appointment; and
- (b) the limited liability company shall, within 14 days after receipt of the notice, or such longer time as may be allowed by the Court or the receiver, submit to the receiver a statement showing as at the date of the receiver’s appointment particulars of the limited liability company’s assets, debts and liabilities, the names, addresses and occupations of its creditors, the securities held by them respectively and such further information as the receiver shall require and the limited liability company is able to give.

(2) The receiver may require any statement or part of a statement submitted under subsection 1(b) to be verified by an affidavit from an officer or manager of the limited liability company.

(3) If any person without reasonable excuse makes default in complying with the requirements of this section, he shall be liable to a default fine.

Delivery to Registrar of accounts of receivers

219 (1) Every receiver of the property of a limited liability company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of six months from the date of his appointment and of every subsequent period of six months and within one month after he ceases to act as receiver, deliver to the Registrar for registration an abstract showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and the aggregate amount of his receipts and of his payments during all preceding periods since his appointment.

(2) Any receiver who makes default in complying with the provisions of this section shall be liable to a default fine.

Enforcement of duty of receiver to make returns

220 (1) If—

- (a) any receiver of the property of a limited liability company, who has made default in filing, delivering or making any return, account or other document or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or
- (b) any receiver of the property of a limited liability company who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator of the limited liability company so to do, failed to render proper accounts of his receipts and payments and to pay over to the liquidator the amount properly payable to him, the Court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.

(2) An application for the purposes of this section may be made by any member or creditor of the limited liability company or by the Registrar or in the case of a default under subsection 1(b) by the liquidator and the order may provide that all costs of and incidental to the application shall be borne by the receiver.

Construction of references to receivers

221 It is hereby declared that, except where the context otherwise requires—

- (a) any reference in this Act to a receiver of the property of a limited liability company, or to a receiver thereof, includes a reference to a receiver of part only of that property and to a receiver only of the income arising from that property or from part thereof; and
- (b) any reference in this Act to the appointment of a receiver under powers contained in any instrument includes a reference to an appointment made under powers which, by virtue of any enactment are implied in and have effect as if contained in an instrument.

PART 14
CHARGES

Register of charges the registration of charges and their priority

222 (1) The Registrar shall keep with respect to each limited liability company a register of charges on the assets of the limited liability company and any person, including the limited liability company, interested in a charge on the assets of the limited liability company may apply to have that charge registered, and the Registrar shall register the charge in such form as may be prescribed.

(2) Any charge registered shall have priority based on the date that it is registered and not on the date of its creation and shall have such priority over any unregistered charge.

(3) Where a charge is created by a limited liability company but is a charge on assets outside Bermuda, the instrument creating or purporting to create the charge may be registered under this section notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(4) Notwithstanding anything in this section, a charge on—

- (a) land in Bermuda shall be registered under the Mortgage Registration Act 1786 or any Act replacing it and not under this Act and the priority of such charge shall be determined in accordance with the said Mortgage Registration Act 1786 or any Act replacing it;
- (b) any ship registered in Bermuda or any interest therein registrable under the Merchant Shipping Act 2002 or any Act replacing it shall be registered under that Act and not under this Act and the priority of such charge shall be determined in accordance with the said Merchant Shipping Act 2002 or any Act replacing it;
- (c) any aircraft, aircraft engine or any interest therein registrable under the Mortgaging of Aircraft and Aircraft Engines Act 1999 or any Act replacing it shall be registered thereunder, and not under this Act and the priority of such charge shall be determined in accordance with the Mortgaging of Aircraft and Aircraft Engines Act 1999 or any Act replacing it; and
- (d) any assignment of a contract of life insurance to which the Life Insurance Act 1978 applies, shall be subject to the procedures set out in the Life Insurance Act 1978 and not under this Act and the priority of such a charge shall be determined in accordance with the Life Insurance Act 1978 and not under this Act.

(5) The register of charges shall be available for inspection by members of the public during normal working hours.

(6) In this Part, “charge” includes any interest created in property by way of security, including any mortgage, assignment, pledge, lien or hypothecation.

Amendment of register of charges

223 (1) Where a registered charge is amended by adding or removing one or more persons entitled to the charge or where the interest of one or more persons entitled to the charge is assigned or transferred, any person, including the limited liability company, interested in the charge may apply to have such amendment, assignment or transfer registered, and the Registrar shall register the amendment, assignment or transfer in such form as may be prescribed.

(2) The registration of an amendment or an assignment or transfer of an interest in a registered charge under subsection (1) shall not affect the priority of the charge, and the charge shall continue to have priority based on the date that it was registered and not the date that any document effecting the amendment, assignment or transfer was executed or that the amendment, assignment or transfer was registered.

Correction of register of charges

224 (1) The Registrar on being satisfied that an omission or misstatement of any particulars with respect to any registered charge on the assets of a limited liability company was accidental, or due to inadvertence or to some other sufficient cause, and is not of a nature to prejudice the position of creditors or members of the limited liability company, may, on the application of the limited liability company or any person interested rectify the register of charges; and any such rectification shall have effect from the date of the first entry of the charge in the register of charges.

(2) Any creditor or member of the limited liability company aggrieved by a decision of the Registrar either to rectify or not rectify the register of charges may within six months of the decision of the Registrar appeal to the Court which shall have the same powers as the Registrar. No appeal shall lie from a decision of the Court.

Special provision with regard to debentures

225 Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit which the debenture holders of that series are entitled *pari passu* is created by a limited liability company, it shall, for the purposes of the registration of the series under section 220, be sufficient if the following particulars are registered with the Registrar—

- (a) the total amount secured by the whole series;
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders, together with a copy of the deed containing the charge, or, if there is no such deed, a copy of one of the debentures of the series,

except that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register of charges particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Particulars required to be registered when commission paid in respect of debentures
226 Where any commission, allowance or discount has been paid or made either directly or indirectly by a limited liability company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the limited liability company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars sent for registration shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued.

Entries of satisfaction and release of property from charge

227 The Registrar, on evidence being given to his satisfaction with respect to any registered charge—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the limited liability company's property or undertaking,

shall enter on the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the limited liability company's property or undertaking, as the case may be, and where he enters a memorandum of satisfaction in whole he shall, if required, furnish the limited liability company with a copy thereof.

Registration of appointment of a receiver or manager

228 (1) If any person obtains an order for the appointment of a receiver or manager of the property of a limited liability company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers give notice of the fact to the Registrar, and the Registrar shall, on payment of such fee as may be prescribed by Regulations made by the Minister, enter the fact in the register of charges.

(2) Where any person appointed receiver or manager of the property of a limited liability company under the powers contained in any instrument ceases to act as such receiver or manager, he shall on so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be liable to a default fine as provided in section 229(1).

(4) Regulations made under this section shall be subject to affirmative resolution procedure.

PART 15

DEFAULT FINE PROCEDURE

Default fines

229 (1) Where in this Act it is provided that any person who is in default shall be liable to a default fine, and the default fine is not provided, such person shall for each such default be liable to a default fine of \$20 for every day during which the default continues.

(2) The Registrar shall not impose a default fine under subsection (1) where he is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

Default fine procedure

230 (1) If the Registrar proposes to impose a default fine, he must give the person concerned a warning notice.

(2) If the Registrar decides to impose a default fine, he must give the person concerned a decision notice.

Warning notices

231 (1) A warning notice must—

- (a) state the default fine which the Registrar proposes to impose;
- (b) be in writing; and
- (c) give reasons for the fine to be imposed.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Registrar.

(3) Where representations are made under subsection (2) to the Registrar, he shall take them into account in deciding whether to give a decision notice.

(4) The Registrar may extend the period specified in the notice.

Decision notices

232 (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Registrar's decision to impose the default fine to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the Supreme Court.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 231 was given; and if no decision notice under subsection

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(1) is given within that period, the Registrar shall be treated as having at the end of that period given a notice of discontinuance under section 233.

(3) A decision notice on the imposition of a default fine must state the date of payment.

(4) A decision notice shall state the day on which it is to take effect.

Notices of discontinuance

233 (1) If the Registrar decides not to impose a default fine proposed in a warning notice, he must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the default alleged to have been committed and the default fine which is being discontinued.

Default fine not to apply in case of conviction

234 (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a default fine imposed by or under section 229 in relation to the same matter.

(2) When a person is liable to a default fine imposed under section 229, such person shall not also be charged with an offence under this Act in relation to the same matter.

(3) Any default fine payable under this Act may be recovered by the Accountant General in the Supreme Court or in a court of summary jurisdiction as a civil debt.

Appeals to the Court

235 (1) A person may appeal to the Court against a decision of the Registrar to impose a default fine.

(2) An appeal must be brought within the period specified in the decision notice.

(3) A decision appealed against under this section shall not have effect—

(a) until the end of the period within which the appeal can be brought; and

(b) if such an appeal is brought, until it is determined or withdrawn.

PART 16

MISCELLANEOUS

Construction and application of this Act and LLC agreement

236 (1) It is the intent of this Act to give the maximum effect to the principle of freedom of contract and to the enforceability of LLC agreements.

(2) To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member

or manager or to another person that is a party to or is otherwise bound by an LLC agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the LLC agreement; except that no such provisions shall permit fraud or dishonesty.

(3) Without limiting the generality of subsection (2), unless otherwise provided in an LLC agreement, where a member or manager is exercising any vote, consent or approval right in respect of its ownership interest in, or its capacity as member of, a limited liability company it may exercise such vote, consent or approval right in its own interests and as it sees fit even though it may not be in the best interests of the limited liability company.

(4) Unless otherwise provided in an LLC agreement, a member or manager or other person shall not be liable to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by an LLC agreement for breach of fiduciary duty for the member's or manager's or other person's good faith reliance on the provisions of the LLC agreement.

(5) A limited liability company may, in its LLC agreement or in any contract or arrangement between the limited liability company and any officer, manager, member or any person employed by the limited liability company as auditor, exempt such officer, manager, member or auditor from, or indemnify such person in respect of, any loss arising or liability attaching to such person whatsoever by virtue of any rule of law in respect of any negligence, default, breach of duty, breach of trust or breach of contract of which such person may be guilty in relation to the limited liability company or any entity in which the limited liability company holds an interest, other than in respect of any fraud or dishonesty of which such person may be guilty.

(6) Subject to its LLC agreement, a limited liability company may advance moneys to any officer, manager, member or any person employed by the limited liability company as auditor, for the costs, charges and expenses incurred by such person in defending any civil or criminal proceedings against such person, on condition that such person shall repay the advance if any allegation of fraud or dishonesty is proved against such person.

(7) Where any officer, manager, member or auditor is found liable to any person for damages arising out of the performance of any function as an officer, manager, member or auditor as contemplated by this Act, then the following provisions of this subsection shall apply—

- (a) an officer, manager, member or auditor may be liable jointly and severally only if it is proved that such officer, manager, member or auditor knowingly engaged in fraud or dishonesty or if the LLC agreement otherwise expressly provides;
- (b) in any case brought before the Court other than that contemplated by paragraph (a) hereof, the liability of the officer, manager, member or auditor, as the case may be, shall be determined as follows—
 - (i) the Court shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons alleged by the parties to have caused or contributed to the loss of the plaintiff. In considering the percentages of responsibility, the Court

shall consider both the nature of the conduct of each person and the nature and extent of the causal relationship between the conduct and the loss claimed by the plaintiff; and

- (ii) the liability of the officer, manager, member or auditor, as the case may be, shall be equal to the total loss suffered by the plaintiff multiplied by the officer's, manager's, member's or auditor's, as the case may be, percentage of responsibility as determined under subparagraph (i) hereof;
- (c) no officer, manager, member or auditor, whose liability is determined under paragraph (b) hereof, shall have any liability in respect of any judgment entered against any other party to the action; and
- (d) except where agreed in writing between the parties, where the liability of an officer, manager, member or auditor has been determined in accordance with paragraph (b) hereof, no other person shall have any right to recover from such officer, manager, member or auditor any portion of any judgment entered against such other person in respect of the action.

(8) Subject to its LLC agreement, a limited liability company may purchase and maintain insurance for the benefit of any officer, member or manager of the limited liability company against any liability incurred by such person in such person's capacity as an officer, member or manager of the limited liability company or indemnifying such person in respect of any loss arising or liability attaching to such person by virtue of any rule of law in respect of any negligence, default, breach of duty, breach of trust or breach of contract of which such person may be guilty in relation to the limited liability company or any entity in which the limited liability company holds an interest and nothing in this Act shall make void or voidable any such policy.

(9) Action validly taken pursuant to one provision of this Act shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this Act but fails to satisfy one or more requirements prescribed by such other provision.

(10) The provisions of this Act shall apply whether a limited liability company has one member or more than one member.

Delivery of electronic records generally

237 (1) Where there is a requirement in this Act, in any statutory instrument made under this Act or in any LLC agreement to provide a document to a person, or for a document to accompany another document, the requirement may, unless precluded by the LLC agreement of a limited liability company, be met by the delivery, or deemed delivery, of an electronic record of the document in accordance with this section.

(2) For the purposes of subsection (1), "to provide" includes to send, forward, give, deliver, submit, file, deposit, furnish, issue, leave at, serve, circulate, lay, make available or lodge.

(3) An electronic record of a document may be delivered to a person by communicating it by electronic means to the person at the address or number that has been notified by the person for the purposes of communication by electronic means.

(4) Subject to subsection (7), an electronic record of a document is deemed to have been delivered to a person if it is published on a website and the person is sent a notice which includes details of—

- (a) the publication of the document on the website, the address of the website, the place on the website where the document may be found and how the document may be accessed on the website; and
- (b) how the person is to notify the limited liability company that the person elects to receive the document in a physical form if the person wishes to receive the document in a physical form.

(5) If, in accordance with a notice sent to a person under subsection (4), the person elects to receive a document in a physical form, the limited liability company shall send to that person such document within seven days of receipt of that person's election.

(6) The accidental omission of a limited liability company to send a document to a person in accordance with subsection (5), or the non-receipt by the person of a document that has been duly sent to that person, does not invalidate deemed delivery of that document to that person pursuant to subsection (4).

(7) If there is a requirement that a person have access to a document for a specified period, the person must be notified of the publication of the document before the commencement of the period and, subject to subsection (8), the document must be published on the website throughout the whole of the period.

(8) Nothing in subsection (7) shall invalidate the deemed delivery of an electronic copy of a document under subsection (4) if—

- (a) the document is published for at least part of a period; and
- (b) the failure to publish it throughout the whole of the period is wholly attributable to circumstances that the person providing the document could not reasonably have been expected to prevent or avoid.

(9) Subject to any rules made under section 256, this section shall not apply to the sending or receipt of any books and papers or documents to or by the Court.

(10) Sections 10 and 17 of the Electronic Transactions Act 1999 do not apply to the delivery of an electronic record in accordance with this section.

Delivery of electronic records to the Registrar

238 (1) Notwithstanding section 237, where there is a requirement in this Act or in any statutory instrument made under this Act for a person to provide a document to the Registrar, the requirement may be met by the delivery to the Registrar of an electronic record of the document in a form and manner determined by the Registrar and in accordance with this section.

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(2) For the purposes of subsection (1), “to provide” includes to deliver, send, notify, give notice, forward, submit, apply or make a report to, or to file, register or lodge with.

(3) Notwithstanding section 11 of the Electronic Transactions Act 1999 and any method of authentication required by this Act or by any statutory instrument made under this Act, the Registrar may direct that any electronic record of a document delivered to the Registrar shall be authenticated in the manner that is directed by the Registrar.

(4) Where an electronic record of a document is delivered to the Registrar that does not comply with the requirements of this section, the Registrar may serve on any person by whom the electronic record was delivered a notice indicating in what respect the electronic record does not comply.

(5) Where the Registrar has served a notice under subsection (4) in respect of an electronic record, the electronic record is deemed not to have been delivered unless—

- (a) a replacement electronic record that complies with the requirements of this section is delivered to the Registrar within 14 days after service of the notice; or
- (b) where there is no replacement electronic record, the requirements of this section have been met otherwise to the satisfaction of the Registrar.

Form of registers etc

239 (1) Any book or paper required by this or any other Act, whether public or private, to be kept by the Registrar or a limited liability company may be kept by recording the matters in question in bound books or in any other permanent manner including a form otherwise than legible.

(2) Where any such book or paper is not kept in a bound book, adequate precautions shall be taken for guarding against falsification and facilitating its discovery and where the book or paper is kept in a form otherwise than legible it shall be capable of being reproduced in a legible form.

(3) Where in this or any other Act, whether public or private, provision is made for the inspection or reproduction of any book or paper, then it shall be treated as a provision to allow inspection or reproduction in a legible form or of being accessed in the manner provided in this section.

(4) Copies of financial statements referred to in section 51 shall be preserved in the registered office of the limited liability company for a period of six years from the date when they were first required.

(5) Where any limited liability company fails to comply with any provision of this section, the limited liability company and any officer, manager or member responsible for the default shall be liable to a default fine of \$1,000.

Certain officers to be exempt from limited liability company fees and charges

240 The Accountant General, the Registrar, the Official Receiver and any person acting on their behalf shall be exempt from the payment of any fee or charges for inspecting or

copying the register or any books or papers of a limited liability company when lawfully entitled so to do.

Production and inspection of books when offence is suspected

241 (1) Without prejudice to any other provision of law, where, on an application to the Minister by or on behalf of the Director of Public Prosecutions, it appears to the Minister that an offence under this Act may have been committed, and that evidence relating to the commission of such offence may be found in any books or papers of or under the control of the limited liability company, a direction in writing may be made by the Minister requiring the manager of the limited liability company or such other person as may be named in the direction to produce the said books or papers or any of them to a person named in the direction at a place and time so named.

(2) When a direction has been made under subsection (1), the person named in the direction to whom the said books or papers are to be produced, shall inspect and may take copies thereof for the purpose of investigating and obtaining evidence of any offence under this Act.

(3) A person to whom books and papers are produced pursuant to subsection (1) shall on completion of his investigation forward a report of the results thereof to the Director of Public Prosecutions together with all copies of documents made by him pursuant to subsection (2).

(4) Any person who fails to comply with a direction of the Minister made under subsection (1) commits an offence and is liable on summary conviction a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(5) A certificate purporting to be signed by the Minister certifying that a person has failed to comply with a direction made by him under subsection (1) shall, in any prosecution for an offence under subsection (4) be prima facie proof of such failure to comply.

(6) For the purpose of this section "limited liability company" shall include a foreign limited liability company.

Appeals to the Court

242 (1) An appeal shall lie to the Court against an order of the Minister revoking a licence under sections 13 and 25.

(2) An appeal under this section shall lie at the instance of the limited liability company affected thereby and shall be commenced by notice in writing served upon the Attorney General within 21 days after the day on which the revocation made under sections 13 and 25 takes effect.

(3) Subject to subsection (2), the Chief Justice may make rules of Court under section 62 of the Supreme Court Act 1905 for the purpose of regulating the practice and procedure on appeals under this section.

(4) On an appeal under this section, the Court may confirm, reverse, or modify the decision of the Minister or remit the matter to him with the opinion of the Court thereon.

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(5) Unless the Court otherwise orders, an appeal under this section shall not have the effect of suspending the execution of the decision appealed against, pending the determination of the appeal.

Onus of proof

243 In any proceedings under this Act in which the right of any limited liability company to carry on business in Bermuda is in issue, the onus of proving that the limited liability company had, at the relevant time, the right to carry on business in Bermuda, shall be on that limited liability company unless, at the relevant time, that limited liability company was licensed under this Act.

Proof of certificate

244 A certificate purporting to be under the hand of the Minister specifying that any particular limited liability company was or was not licensed under this Act during any period specified in the certificate shall be receivable in evidence in any proceedings under this Act without further proof and shall be prima facie evidence of the facts specified therein.

Publication of orders

245 Every revocation of the licence of a limited liability company made under sections 13 and 25 shall be published in the Gazette and shall take effect from the date of such publication or such later date as may be specified therein.

Penalty for false statements or failure to make a statement

246 (1) If any person in any return, report, certificate, book or paper or other document, required by or for the purposes of any provision of this Act wilfully makes a statement false in any material particular, knowing it to be false, he commits an offence and is liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to a fine of \$2,000 or to imprisonment for a term of twelve months or to both such fine and imprisonment.

(2) Any person in any return, report, certificate, book or paper or other document, required by or for the purposes of any provision of this Act fails to make a statement he is required to make in such return, report, certificate, book or paper or other document and any person who wilfully fails to make a return, report or document which he is required to make shall be liable to a default fine of \$1,000.

Time limitation in summary offence prosecutions

247 For purposes of this Act, no prosecution for a summary offence shall commence more than three years after the offence was committed.

Power of Court to grant relief in certain cases

248 (1) If in any proceedings for negligence, default, breach of duty or breach of trust or breach of contract against an officer of a limited liability company or a person employed by a limited liability company as auditor, whether he is or is not an officer of the limited liability company, it appears to the Court hearing the case that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but

that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his liability on such terms as the Court may think fit.

(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) Where any case to which subsection (1) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

Suits and actions against Registrar and Official Receiver

249 (1) No suit or action shall lie against the Registrar or the Official Receiver or any person acting on their behalf in respect of anything done or omitted to be done in their official capacity in good faith without negligence.

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the Court under Part 16.

Registrar and Official Receiver to be indemnified in respect of foreign suits

250 Neither the Registrar nor the Official Receiver shall be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the Court unless he is indemnified by or on behalf of the person who wishes him to act against any judgment, order or costs that may be awarded against him by deed guarantee or deposit, as he may require.

Mode of making applications to Court

251 (1) Subject to any other provision of the law including the Rules of the Supreme Court 1985, any application under this Act shall be made by originating summons.

(2) An originating summons may in the first place be heard ex parte when the Court may direct that the summons shall be served on such persons, if any, as it shall think fit and that the summons shall be supported by such evidence as it shall require.

Power to enforce orders

252 Orders made by the Court under this Act may be enforced as orders made in an action pending therein.

Fees

253 (1) The fees prescribed by regulations made under section 2 of the Government Fees Act 1965 shall accompany the certificate of formation filed under section 30.

(2) Subject to subsections (3), (4) and (5)—

- (a) the persons seeking to form a limited liability company shall at the time of filing of the certificate of formation in respect of that limited liability company; and
- (b) thereafter, an exempted LLC shall on or before 31 January in each year;
- (c) thereafter, a local LLC shall on or before 31 March in each year,

pay to the Registrar the fee referred to in subsection (1).

(3) Where a certificate of formation of a limited liability company is filed after 31 August in any year, the fee payable at the time of such filing shall be one half the amount referred to in subsection (1).

(4) Where in any year a limited liability company fails to pay the annual fee, the limited liability company commits an offence and is liable on summary conviction to a default fine not exceeding \$100 for every day during which the default continues.

(5) Notwithstanding subsection (4), where—

- (a) in any year, a limited liability company fails to pay the annual fee; and
- (b) the Registrar is satisfied that that failure is not due to the wilful neglect of the members,

the Registrar may accept payment of the sum due together with a penalty of \$315 and upon such acceptance the provisions of subsection (4) shall not apply.

(6) The fees specified in referred to in subsection (1) shall accompany the filing of the certificate listed in respect thereof.

(7) In this section and in section 254, “annual fee” means the fee referred to in subsection (2)(b).

Submission of annual declaration

254 (1) A limited liability company shall, on or before 31 January in each year, send to the Registrar, together with the annual fee, a declaration in writing stating the general nature of the business transacted by the limited liability company.

(2) If any limited liability company fails to send a declaration to the Registrar in compliance with subsection (1), the limited liability company shall be liable to a default fine set out in section 229.

Regulations

255 (1) The Minister may make such regulations as are expedient to give effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister shall make regulations to enable listing of LLC interests on an appointed stock exchange.

LIMITED LIABILITY COMPANY ACT 2016

(3) Regulations made by the Minister under this section shall be subject to the negative resolution procedure.

(4) Regulations may be made by the Minister of Finance under the Government Fees Act 1965 or the Stamp Duties Act 1976 to fix fees for any function performed under this Act, unless such fees are otherwise prescribed.

Rules

256 (1) The power of the Chief Justice to make rules of Court under section 62 of the Supreme Court Act 1905, shall include a like power in relation to all Court proceedings under this Act including any matters to be prescribed in relation to the winding up of an limited liability company by the Court and the fees to be paid in respect of Court proceedings.

(2) The Minister may by rules prescribe any matter to be prescribed under this Act in respect of which the Chief Justice is not entitled to make rules and may make rules prescribing the manner and form in which any application or declaration under this Act may be made.

(3) All rules made by the Chief Justice, other than rules prescribing fees, shall not be subject to section 6 of the Statutory Instruments Act 1977.

(4) All rules by whomsoever made under this Act prescribing fees shall be subject to affirmative resolution procedure.

(5) All rules, unless otherwise expressly provided, and those referred to in subsections (3) and (4) shall be subject to negative resolution procedure.

Bermuda Housing Act 1980

257 Nothing in this Act shall affect the provisions of section 61 of the Bermuda Housing Act 1980.

Consequential amendments

258 (1) The consequential amendments set out in the Schedule have effect.

(2) The Minister may by order subject to the negative resolution procedure repeal or amend any provision—

(a) in any law that is passed before this Act; or

(b) in any other instrument made under an Act before the passing of this Act,

where it appears to him that that provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act or regulations made hereunder.

Commencement

259 (1) This Act shall come into operation on such day as the Minister may by notice in the Gazette appoint.

(2) The Minister may appoint different days for different provisions of this Act.

SCHEDULE

(Section 258)

CONSEQUENTIAL AMENDMENTS

Amends Companies Act 1981

1 (1) Section 2(1) of the Companies Act 1981 is amended in the definition of “exempted undertaking”, by inserting after the words, “Act 1992” the words “or an exempted LLC as defined in section 21 of the Limited Liability Company Act 2016”.

(a) (2) The Companies Act 1981 is amended by inserting after section 132O the following—

“Conversion of company to limited liability company

132P (1) Upon satisfaction of the requirements for conversion that are set out in section 99 of the Limited Liability Company Act 2016, any company may—

- (a) convert to a limited liability company; and
- (b) be registered as a limited liability company under the Limited Liability Company Act 2016.

(2) The effective date of the conversion of the company to a limited liability company shall be the date of filing with the Registrar of the certificate of conversion or any later date or time (which shall be a date or time certain) specified in the certificate of conversion of the company to a limited liability company.

(3) With effect from the date indicated on the certificate of conversion filed with the Registrar under section 99 of the Limited Liability Company Act 2016, the company shall be governed as a limited liability company in accordance with the Limited Liability Company Act 2016. ”.

(3) The Companies Act 1981 is amended by inserting the following section after section 132P—

“Conversion of a limited liability company to a company

132Q (1) Upon satisfaction of the requirements for conversion that are set out in section 98 of the Limited Liability Company Act 2016, any limited liability company may—

- (a) convert to a company; and
- (b) be registered as a company under this Act.

(2) With effect from the date indicated on the certificate of conversion filed with the Registrar under section 98 of the Limited Liability Company Act 2016, the limited liability company shall be governed as a company in accordance with this Act.

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(3) For any company so converted, the certificate of conversion so issued by the Registrar shall be deemed to be the certificate of formation for the purposes of this Act.”.

Amends Partnership Act 1902

- 2 (1) The Partnership Act 1902 is amended in section 4A(3A)—
- (a) in paragraph (b), by deleting the comma at the end of the paragraph and substituting a semicolon;
 - (b) by inserting after paragraph (b) the following new paragraph—
 - “(c) is a limited liability company that has applied under section 100 of the Limited Liability Company Act 2016 for conversion from a limited liability company to a partnership that is exempted and limited,”.

Amends Limited Partnership Act 1883

3 The Limited Partnership Act 1883 is amended by inserting after section 28 the following new section—

“Effect of conversion of exempted LLC to limited partnership

29 (1) An exempted LLC may convert to a partnership that is both exempted and limited with legal personality upon satisfaction of the requirements set out in—

- (a) section 4A of the Partnership Act 1902; and
- (b) section 100 of the Limited Liability Company Act 2016.

(2) The effective date of the conversion of an exempted LLC to a partnership shall be the date of filing with the Registrar of the certificate of conversion or any later date or time (which shall be a date or time certain) specified in the certificate of conversion.

(3) With effect from the date indicated on the certificate of conversion issued by the Registrar under section 100 of the Limited Liability Company Act 2016, the exempted LLC shall be governed as a partnership in accordance with this Act.

(4) For any exempted LLC so converted, the certificate of conversion issued by the Registrar shall be deemed to be the certificate of registration for the purposes of section 4 of this Act.

(5) In this section “exempted LLC” has the meaning assigned to it in section 21 of the Limited Liability Company Act 2016.”.

Amends Exempted Partnerships Act 1992

4 The Exempted Partnerships Act 1992 is amended by inserting after section 13D the following new section—

LIMITED LIABILITY COMPANY ACT 2016

“Effect of conversion of exempted LLC to exempted limited partnership

13E (1) An exempted LLC may convert to a partnership that is both exempted and limited with legal personality upon satisfaction of the requirements set out in—

(a) section 4A of the Partnership Act 1902; and

(b) section 100 of the Limited Liability Company Act 2016.

(2) The effective date of the conversion of an exempted LLC to a partnership shall be the date of filing with the Registrar of the certificate of conversion or any later date or time (which shall be a date or time certain) specified in the certificate of conversion.

(3) With effect from the date indicated on the certificate of conversion issued by the Registrar under section 100 of the Limited Liability Company Act 2016, the exempted LLC shall be governed as a partnership in accordance with this Act.

(4) For any exempted LLC so converted, the certificate of conversion issued by the Registrar shall be deemed to be the certificate of registration for the purposes of this Act.

(5) In this section “exempted LLC” has the meaning assigned to it in section 21 of the Limited Liability Company Act 2016.”.

Amends Exempted Undertakings Tax Protection Act 1966

5 The Exempted Undertakings Tax Protection Act 1966 is amended—

(a) in section 1—

(i) in paragraph (c), at end of the paragraph, by inserting the word “or”;

(ii) by inserting after paragraph (c) the following new paragraph—

“(d) an exempted LLC within section 21 of the Limited Liability Company Act 2016;”;

(b) in section 2(2) by inserting after the word “shares” the words “LLC interest.

Amends Government Fees Regulations 1976

6 The Schedule to the Government Fees Regulations 1976 is amended by inserting after Head 35 the following—

“Head 35A

Limited Liability Company Act 2016

1 (1) Considering an application or request regarding the reservation of a name or change of name under section 7(2) \$90

LIMITED LIABILITY COMPANY ACT 2016

“Head 35A

Limited Liability Company Act 2016

2	Filing of initial certificate of registration to be registered under section 30(1)	\$305
3	Registering a secondary name under section 8	\$90
4	Filings for certificate of registration:	
	(a) certificate of amendment of registration under section 32(1)	\$90
	(b) certificate of cancellation of certificate of registration under section 33	\$90
	(c) certificate of amendment or cancellation under section 37	\$90
	(d) restated certificate of registration under section 38	\$90
	(e) certificate of correction under section 39	\$90
	(f) any other certificate which may be required under section 33 for which fee is not specifically provided herein	\$90
5	Applying to amalgamate or merge under sections 86, 87 or 88	
	(a) amalgamation or merger of any two entities	\$180
	(b) each additional entity that is a party to an amalgamation or merger	\$90
6	Filing a notice of amalgamation or merger of an LLC and a foreign entity and continuance as foreign entity under section 87	\$90
7	Registering an amalgamated LLC or surviving LLC under section 94	\$90
8	Filing a certificate of continuance as an LLC under section 96	\$405
9	Filing a notice of discontinuance under section 98	\$405
10	Filing a certificate of conversion, whether to or from an LLC under sections 100 or 101	\$405
11	Filing certificate of conversion of an LLC to an exempted limited partnership under section 102	\$405
12	Filing a certificate of conversion of an exempted limited partnership to an exempted LLC under section 103	\$565
13	Making available for inspection by a member of the public a document, register or index in the custody of the Registrar of Companies pertaining to active LLCs	\$11
14	Application for consent of Minister under section 67	\$315
15	Applying for consent to take any mortgage of land in Bermuda under section 24(b)	\$180
16	Applying to restore an LLC to the Register under section 210(6)	\$180
17	Registering an order to restore an LLC to register under section 210(6)	\$90

LIMITED LIABILITY COMPANY ACT 2016

“Head 35A

Limited Liability Company Act 2016

18	Registering—	
	(a) under Part 14 of the Act any charge that may be registered thereunder on the assets of a local LLC	\$180
	(b) under Part 14 of the Act any charge that may be registered thereunder on the assets of an exempted LLC—	
	(i) where the amount secured is \$1,000,000 or less	\$360
	(ii) where the amount secured is over \$1,000,000	\$630
	(c) particulars of a series of debentures under Part 14 of the Act	\$90
	(d) complete or partial satisfaction of mortgage or charge under section 227	\$90
	(e) the appointment of a receiver or manager under section 228	\$90
19	Applying to rectify a registered charge under section 224	\$90
20	Registering or filing any document by this Act required or authorised to be delivered, sent or forwarded to the Registrar or the consent of the BMA	\$90
21	Preparing a copy of any document by a public officer (fee is for each page)	\$2
22	Searching by a public officer of the records maintained by the Registrar of Companies for the purpose of obtaining a certificate under the Act	\$90
23	Issuing a prescribed form	\$3
24	Certifying and sealing a copy of any document or set of documents	\$90
25	Making available for inspection by a member of the public a document, register or index in the custody of the Registrar of Companies pertaining to dissolved or struck-off companies	\$22
26	Annual Fee payable in accordance with section 253	\$900
27	Maintaining and updating the Register of Managers or Register of Directors by the Register in accordance with the LLC Act and Companies Act 1981	\$90
28	Application for a licence under section 12 for a local LLC to carry on business in Bermuda	\$2,000
29	Annual Fee for a licence to carry on business in Bermuda under section 14	\$1,000

LIMITED LIABILITY COMPANY BILL 2016

EXPLANATORY MEMORANDUM

This Bill seeks to make provision for the formation of limited liability companies (“LLCs”). Bermuda’s LLC is very similar to the widely-used Delaware LLC vehicle. Specifically, the Bermuda LLC legislation reflects the principal features of the Delaware LLC with amendments and modifications to reflect Bermuda law and concepts.

Clause 1 provides a short title to the Bill.

Clause 2 provides definitions for the interpretation of the provisions of the Bill.

Clause 3 defines subsidiary, holding company and other terms for the interpretation of the Bill.

Clause 4 makes provision for the appointment of the Registrar of Companies as the Registrar of LLCs and further for the maintenance of a register of LLCs.

Clause 5 outlines the requirement for an LLC agreement and details the terms and conditions which govern that agreement.

Clause 6 makes provision that the law governing the LLC agreement is the law of Bermuda.

Clause 7 provides for the conventions which govern the naming of a limited liability company.

Clause 8 provides for the conventions which govern the secondary name of a limited liability company.

Clause 9 provides for the interpretation of Part 2 which relates to local (LLCs).

Clause 10 makes provision for the formation of a local LLC.

Clause 11 specifies the requirements for a local LLC carrying on business in Bermuda and is modelled on the Third Schedule to the Companies Act 1981.

Clause 12 provides for an application by a local LLC for a licence.

Clause 13 provides for the grant and revocation of a licence to a local LLC similar to the licensing process by which a company controlled by foreign ownership can operate in the local market under the Companies Act 1981.

Clause 14 provides for fees for licensed local LLCs.

Clause 15 applies with respect to local hotel LLCs.

Clause 16 imposes a penalty for the improper exercise of voting rights relating to a local LLC.

Clause 17 provides for a return of holdings of an LLC interest.

Clause 18 provides for the issuance and assignment of an LLC interest.

LIMITED LIABILITY COMPANY BILL 2016

Clause 19 empowers the Minister to require information of an LLC interest, including the classes of LLC interest, the voting and other rights attached to each class.

Clause 20 provides for the acquisition of land by local LLCs.

Clause 21 defines the term “exempted LLC” for the purposes of this Bill.

Clause 22 provides for an exempted LLC to be an exempted undertaking for the purposes of the Exempted Undertakings Tax Protection Act 1966 and the provisions of this Bill.

Clause 23 provides for the denomination of currency for the LLC interests of exempted LLCs.

Clause 24 specifies the restrictions of an exempted LLC on carrying on business.

Clause 25 defines the circumstances in which an exempted LLC may carry on business in Bermuda.

Clause 29 outlines the requirements for the formation of a limited liability company and the registration thereof. An LLC shall have separate legal personality. The consent of the BMA to the formation of an LLC will be required, but will be dispensed with if the LLC engages a licensed Corporate Service Provider in Bermuda.

Clause 30 provides for the issue of a certificate of formation for limited liability companies registered in Bermuda.

Clause 31 provides for the establishment and maintenance of the register of LLCs.

Clause 32 makes provision for the amendment of the certificate of formation where there are any changes in the particulars of the limited liability company.

Clause 33 makes provision for cancellation of a certificate of formation .

Clause 34 provides for the manner of execution of certificates.

Clause 35 empowers the Court to deal with execution of certificates in the circumstances specified in this clause.

Clause 36 provides for filings by electronic means of any document required to be filed with the Registrar.

Clause 37 specifies the effective date of filing the certificate.

Clause 38 provides for restatement of certificates.

Clause 39 provides for correction of certificates.

Clause 40 seeks to set out the various forms of contribution which a member may make to an LLC.

Clause 41 provides for the contribution to the assets of a limited liability company by its members and sets out the penalties or consequences of a failure by a member of an LLC to perform any promise to make a contribution to the LLC.

LIMITED LIABILITY COMPANY BILL 2016

Clause 42 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 43 makes similar provision for the allocation of distributions among members, classes of LLC interests or groups of members.

Clause 44 provides that certain defences are not available on the sole ground either of the rate of interest charged or compensation to be paid by one party to an LLC agreement to another party.

Clause 45 makes provision for the admission of members to a limited liability company and makes provision for the treatment of LLC interests.

Clause 46 makes provisions for the creation of classes of LLC interests or groups of members.

Clause 47 the rights attributable to a class or group under the LLC agreement.

Clause 48 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 49 provides for the cessation of membership and the treatment of a member on death or bankruptcy.

Clause 50 makes provision for the mandatory keeping of proper accounts and records by a limited liability company.

Clause 51 provides for a limited liability company to submit annual returns by March 31st in each year and provides for the penalty where a limited liability company defaults on the submission.

Clause 52 allows for the power to waive preparation of financial statements.

Clause 53 allows for access to and confidentiality of information; records.

Clause 54 makes provision for the remedies for a breach of an LLC agreement.

Clause 55 provides for a limited liability company to establish and maintain a register of its members. A failure to maintain such a register will incur a penalty.

Clause 56 provides for inspection of the register of members and for the power of the court to rectify the register of members.

Clause 57 provides for the power of the court to rectify the register of members.

Clause 58 allows for a person to be named, appointed or designated as a manager pursuant to an LLC agreement.

Clause 59 requires that a register of managers be kept by every limited liability company providing information complying with subsection (7).

Clause 60 provides that unless otherwise provided in an LLC agreement the management of a limited liability company be vested in its members in proportion to the percentage or other interest of the members.

LIMITED LIABILITY COMPANY BILL 2016

Clause 61 allows for managers of a limited liability company to make contributions to the LLC and share in the profits, losses and distributions of the LLC as members.

Clause 62 provides within an LLC agreement for classes or groups of managers having relative rights, powers and duties to make provision for the future creation of additional classes or groups of managers and grant to all or certain identified managers voting rights on a per capita basis.

Clause 63 provides for remedies for breach of LLC agreement by manager.

Clause 64 provide for the reliance on reports and information by a member or manager of a limited liability company.

Clause 65 provides for the delegation of rights and powers to manage and control the business and affairs of the limited liability company.

Clause 66 empowers an LLC to be formed for any lawful business purpose or activity for profit and imposes restrictions as set out in clauses 65 and 66.

Clause 67 applies to LLCs the restricted business activities that are applicable to Bermuda exempted companies under section 4A and 4AA of the Companies Act 1981.

Clause 68 applies to LLCs the prohibited business activities applicable to Bermuda exempted companies under section 4B of the Companies Act 1981.

Clause 69 provides for the making of a contract by a limited liability company.

Clause 70 provides for the manner of execution of documents.

Clause 71 contains provisions allowing members of the LLC to agree not to exercise certain statutory powers reserved to the LLC.

Clause 72 permits a member or manager to enter into certain business transactions with an LLC.

Clause 73 empowers the Court to hear and determine contested matters relating to managers of an LLC and any action relating to the interpretation and enforcement of an LLC agreement and related documents.

Clause 74 permits a member to receive distributions in the manner specified in the LLC agreement.

Clause 75 specifies the circumstances in which a manager of an LLC may resign.

Clause 76 specifies the circumstances in which a member of an LLC may resign.

Clause 77 provides for the manner in which distributions may be made from an LLC where there has been a resignation referred to in clause 55 or 56.

Clause 78 permits distributions in kind.

Clause 79 confirms a manager, or member's right to a distribution.

Clause 80 expressly prohibits distributions that are expected to result in the LLC becoming insolvent, with certain exceptions.

LIMITED LIABILITY COMPANY BILL 2016

Clause 81 describes the nature of an LLC interest as being personal property.

Clause 82 provides for assignment of an LLC interest. No acquisition of any assigned interest may be effected without satisfying the same solvency test that a Bermuda company must satisfy.

Clause 83 provides that a member's LLC interest may be subject to a charging order.

Clause 84 makes provisions for an assignee to have the right of become a member of the limited liability company.

Clause 85 provides for a deceased or incompetent member's personal representative to exercise such member's rights in the LLC.

Clause 86 provides for amalgamation and merger of LLCs.

Clause 87 a framework to enable two or more LLCs, or one LLC and one or more entities with separate legal personality incorporated, formed or registered outside of Bermuda to amalgamate and merge (in the same way, and with the same solvency provisions, creditor protection features, etc. as a Bermuda LLC).

Clause 88 makes provision for the merger and consolidation of two or more limited liability companies with a foreign entity and continuation as a foreign entity.

Clause 89 specifies the documents to be filed on amalgamation or merger and continuation as a foreign entity.

Clause 90 specifies the provisions applicable to amalgamation or merger and continuation as a foreign entity.

Clause 91 sets out the terms and means of effecting an amalgamation agreement or merger agreement.

Clause 92 requires, unless otherwise provided in its LLC agreement, that each amalgamating or merging LLC shall submit agreements for its members, approval and, if there are classes of members, such agreements shall be submitted by each class of member.

Clause 93 allows, unless otherwise provided in an LLC agreement, for a short form amalgamation or merger of one or more of its wholly-owned subsidiary LLCs.

Clause 94 requires for the LLC to file with the Registrar a certificate of formation of its amalgamated or surviving LLCs.

Clause 95 specifies the effect of the certificate of amalgamation or merger on the continuance, actions, liabilities and obligations of an LLC.

Clause 96 requires LLCs to file with the Registrar in accordance with section 36 for a certificate of continuance in Bermuda of foreign limited liability companies.

Clause 97 allows for the discontinuance of exempted LLCs to foreign jurisdictions.

Clause 98 specifies the documents to be filed with the Registrar on the discontinuance and continuance as a foreign entity.

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Clause 99 specifies the provisions applicable to the discontinuance and continuation as a foreign entity.

Clause 100 makes provision for the conversion of any LLC to a company.

Clause 101 provides that upon satisfaction of the requirements as set out in section 132P of the Companies Act 1981, a company may seek conversion to a limited liability company.

Clause 102 provides for the conversion of limited liability companies to exempted limited partnerships.

Clause 103 makes provision for the conversion of an exempted LLC an exempted limited partnership.

Clause 104 specifies the modes of winding up of a limited liability company.

Clause 105 sets out the liabilities of contributories and present and past members in the event of a limited liability company being wound up.

Clause 106 sets out a definition and specifies the nature of liability of a contributory in the event of winding up.

Clause 107 specifies the liabilities and contributories in a case of death or bankruptcy of a member.

Clause 108 specifies the circumstances in which a limited liability company may be wound up by the Court.

Clause 109 sets out the definition of “inability to pay debts”.

Clause 110 contains provisions relating to applications for the winding up of a limited liability company.

Clause 111 specifies the Court’s powers on hearing a winding up petition.

Clause 112 empowers the Court to stay or restrain proceedings on a winding up petition.

Clause 113 provides for the avoidance of dispositions of property after commencement of winding up proceedings.

Clause 114 contains provisions relating to the commencement of winding up by the Court.

Clause 115 requires a statement of the limited liability company’s affairs to be submitted to the Official Receiver.

Clause 116 provides for reports by the Official Receiver.

Clause 117 empowers the Court to appoint liquidators.

Clause 118 contains provisions relating to the appointment of liquidators.

Clause 119 contains provisions that apply where a person other than the Official Receiver is appointed as liquidator.

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Clause 120 contains general provisions as to liquidators.

Clause 121 provides for custody and vesting of a limited liability company's property by the liquidator.

Clause 122 specifies the powers of a liquidator.

Clause 123 provides for the exercise and control of a liquidator's powers.

Clause 124 provides for the books to be kept by a liquidator.

Clause 125 provides for the release of liquidators.

Clause 126 requires receipts by liquidators.

Clause 127 requires audit of a liquidator's accounts.

Clause 128 provides for meetings of creditors and members to determine whether a committee of inspection shall be appointed.

Clause 129 specifies the constitution and proceedings of the committee of inspection of the limited liability company.

Clause 130 provides for the powers of the Registrar where there is no committee of inspection.

Clause 131 empowers the Court to stay a winding up.

Clause 132 provides for the settlement of the list of contributories and application of assets.

Clause 133 requires delivery of property to a liquidator.

Clause 134 provides for payment of debts due from a contributory and the extent to which set-off allowed.

Clause 135 empowers the Court to make calls.

Clause 136 provides for an order by the Court on contributory conclusive evidence subject to any right of appeal.

Clause 137 provides for the appointment of a special manager.

Clause 138 contains power to exclude creditors not proving their debts or claims in time.

Clause 139 allows for the adjustment of rights of contributories.

Clause 140 provides for the inspection of books of a limited liability company by creditors and members.

Clause 141 empowers the Court to order costs of winding up to be made out of assets of the limited liability company.

Clause 142 contains power to summon persons suspected of having any property of a limited liability company.

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Clause 143 contains power to order public examination of an officer or a member in relation to the affairs of a limited liability company.

Clause 144 empowers the Court to require the arrest of an absconding contributory of a limited liability company.

Clause 145 empowers the Court to provides for cumulative proceedings relating to a contributory debtor of a limited liability company.

Clause 146 provides for delegation to a liquidator of certain powers of the Court.

Clause 147 provides for the early dissolution of a limited liability company.

Clause 148 requires the Official Receiver to give notice under clause 145 to the limited liability company.

Clause 149 empowers the Court to make an order for dissolution of a limited liability company.

Clause 150 specifies circumstances in which a limited liability company may be wound up voluntarily.

Clause 151 provides for the appointment of liquidator and dissolution of limited liability company of limited duration in accordance with its LLC agreement.

Clause 152 provides for a notice of resolution to wind up voluntarily.

Clause 153 specifies when voluntary winding up commences.

Clause 154 specifies the effect of voluntary winding up on the business and status of a limited liability company.

Clause 155 provides for the avoidance of certain changes after commencement of voluntary winding up.

Clause 156 provides for a statutory declaration of solvency in the case of voluntary winding up.

Clause 157 contains provisions applicable to members' winding up.

Clause 158 provides for the appointment and remuneration of liquidators.

Clause 159 contains power to fill a vacancy in the office of liquidator.

Clause 160 empowers a liquidator to accept shares and other consideration for the sale of property of a limited liability company.

Clause 161 requires a liquidator to call a creditors' meeting in case of insolvency.

Clause 162 requires a liquidator to call a meeting of the members at the end of each year.

Clause 163 provides for a final meeting and dissolution in a members' voluntary winding up.

Clause 164 contains alternative provisions as regards annual and final meetings in case of insolvency.

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Clause 165 contains provisions applicable to creditors' winding up.

Clause 166 provides for a meeting of creditors.

Clause 167 provides for the appointment of liquidators.

Clause 168 provides for the appointment of a committee of inspection.

Clause 169 allows for the fixing of liquidator's remuneration, cessor of officers, managers, and members' powers.

Clause 170 provides for filling a vacancy in the office of liquidator.

Clause 171 provides for the application of section 160 to a creditors voluntary winding up.

Clause 172 requires a liquidator to call annual meetings of limited liability company and its creditors at end of each year.

Clause 173 provides for a final meeting and dissolution by the liquidator.

Clause 174 specifies provisions applicable to every winding up whether by members or creditors.

Clause 175 allows distribution of property of limited liability company to members in accordance with their rights and interest in the limited liability company.

Clause 176 specifies powers and duties of liquidator in a voluntary winding up.

Clause 177 empowers the Court to appoint and remove liquidator in a voluntary winding up.

Clause 178 requires notice by a liquidator of his appointment to be published in newspaper.

Clause 179 specifies when arrangements entered into are binding.

Clause 180 sets out the liquidator's power to stay voluntary winding up proceedings.

Clause 181 provides for applications to the court to have questions relating to the winding up of a limited liability company to be determined or powers exercised.

Clause 182 provides for the costs of voluntary winding up.

Clause 183 provides for the rights of creditors and contributories in winding up.

Clause 184 requires that debts of all descriptions may be proved on the winding up of the limited liability company.

Clause 185 provides for the application of bankruptcy rules in relation to the winding up of insolvent limited liability companies.

Clause 186 provides for preferential payments.

Clause 187 contains provisions relating to fraudulent preference.

Clause 188 provides for liability and rights where there are fraudulent preferences.

LIMITED LIABILITY COMPANY BILL 2016

Clause 189 specifies the effect of a floating charge on the undertaking or property of the limited liability company.

Clause 190 provides for disclaimer of onerous property.

Clause 191 provides for the rights of creditors as to execution or attachment in the case of a limited liability company that is being wound up.

Clause 192 specifies the duties of the Provost Marshal as to goods taken in execution of the limited liability company being wound up.

Clause 193 specifies offences in liquidation.

Clause 194 specifies the penalty for falsification of books by officers or managers of a limited liability company.

Clause 195 contains provisions relating to fraud by officers and managers of a limited liability company which has gone into liquidation.

Clause 196 contains provisions relating to fraudulent trading.

Clause 197 provides for power of Court to assess damages against officers for offences in connection with the formation of the limited liability company.

Clause 198 provides for prosecutions relating to offences in relation to the limited liability company.

Clause 199 disqualifies a body corporate from appointment as liquidator.

Clause 200 provides for the enforcement of the duty of a liquidator to make returns etc.

Clause 201 requires that notification that a limited liability company is in liquidation appear on all documentation relating to the limited liability company.

Clause 202 provides for the exemption of certain documents from stamp duty in the winding up of the limited liability company.

Clause 203 provides for books of a limited liability company to be evidence of truth of all matters recorded therein.

Clause 204 permits the disposal of books and papers of limited liability company as provided therein.

Clause 205 requires that the Registrar be provided with information as to pending liquidations of limited liability companies.

Clause 206 provides for unclaimed assets to be paid into the Consolidated Fund.

Clause 207 provides for the appointment of a commissioner to take evidence.

Clause 208 provides for the swearing of affidavits.

Clause 209 empowers the Court to declare dissolution of limited liability company void.

Clause 210 empowers the Registrar to strike a defunct limited liability company off the register.

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Clause 211 provides that property of a dissolved limited liability company is bona vacantia.

Clause 212 provides for disclaimer by the Crown of title to property vesting under clause 210.

Clause 213 provides for the investment of surplus funds.

Clause 214 disqualifies an undischarged bankrupt from acting as receiver.

Clause 215 provides for the appointment of receivers.

Clause 216 requires notification that a receiver has been appointed to be put on the business documents of the limited liability company.

Clause 217 empowers the Court to fix remuneration on the application of liquidator.

Clause 218 requires information regarding the appointment of a receiver to be provided to a limited liability company.

Clause 219 requires accounts by receivers.

Clause 220 provides for enforcement of the duty of a receiver to make returns by an Order of the Court.

Clause 221 provides the construction of references to receivers.

Clause 222 provides for the keeping of a register of charges, the registration of charges therein and their priority.

Clause 223 provides for amendment of the register of charges.

Clause 224 provides for correction of the register of charges.

Clause 225 provides for registration of debentures.

Clause 226 provides for circumstances where commission is paid in respect of debentures.

Clause 227 provides for entries of satisfaction and release of property from charges.

Clause 228 requires notice to be given to the Registrar with respect to the appointment of a receiver or manager.

Clause 229 provides for default fines.

Clause 230 sets out the default fine procedure by the Registrar.

Clause 231 specifies the period given for warning notices by the Registrar.

Clause 232 requires decision notices as a part of the procedure for the imposition of default fines.

Clause 233 provides for notices of discontinuance in connection with default fines.

Clause 234 provides that the default fine provisions will not apply in case of a conviction.

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Clause 235 provides for appeals to the Supreme Court against a decision of the Registrar to impose a default fine.

Clause 236 provides for construction and application of this Act and an LLC agreement

Clause 237 contains general provisions relating to the delivery of electronic records.

Clause 238 provides for delivery of electronic records to the Registrar.

Clause 239 specifies the form of registers to be kept by a limited liability company.

Clause 240 provides for exemption from limited liability company fees and charges in certain circumstances.

Clause 241 provides for the production and inspection of books when commission of an offence is suspected.

Clause 242 provides for appeals to the Court against revocation of a licence.

Clause 243 deals with onus of proof.

Clause 244 requires proof of the issue of a certificate.

Clause 245 provides for publication of orders in the Gazette in relation to revocation of licences.

Clause 246 specifies the penalty for false statements.

Clause 247 specifies the time limit for prosecution of summary offences.

Clause 248 empowers the Court to grant relief in certain cases for breach of trust against an officer of a limited liability company.

Clause 249 protects the Registrar and Official Receiver from liability with respect to the performance of their functions under this Bill.

Clause 250 provides for the Registrar and Official Receiver to be indemnified in respect of foreign suits.

Clause 251 specifies that applications to the Court for matters under this Bill shall be by originating summons.

Clause 252 provides for the enforcement of orders made by the Court.

Clause 253 provides for the fees to be paid.

Clause 254 provides for submission of an annual declaration to the Registrar.

Clause 255 makes provision for regulations. This clause is drafted widely to allow flexibility as the LLC will be a new offering for Bermuda.

Clause 256 empowers the Chief Justice to make rules under section 62 of the Supreme Court Act 1905 for the purposes of this Bill.

Clause 257 specifies the effect of provisions of section 61 of Bermuda Housing Act 1980.

Clause 258 and the Schedule provide for consequential amendments.

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Clause 259 provides for commencement of the provisions of this Bill.