



ANGUILLA

**REVISED STATUTES OF ANGUILLA**

**CHAPTER L65**

**LIMITED LIABILITY COMPANY ACT**

Showing the Law as at 15 December 2014

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates:

Act 3/2014, in force 2 May 2014

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**LIMITED LIABILITY COMPANY ACT**

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**LIMITED LIABILITY COMPANY ACT**

## PART 1

## PRELIMINARY

**Definitions****1.** In this Act—

“Anguilla company” means a company formed or continued under this Act, a company incorporated or continued under the Companies Act or a company incorporated or continued under the International Business Companies Act;

“articles” means, unless qualified, the original or restated articles of formation, articles of amendment, articles of merger or consolidation, articles of dissolution or articles of revival;

“contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services that a person contributes to an LLC in his capacity as a member;

“Court” means the High Court;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“economic interest” means a member’s share of the profits and losses of an LLC and a member’s right to receive distributions of the LLC’s assets;

“foreign LLC” means an LLC formed under the laws of any foreign jurisdiction;

“Judge” means a Judge of the Court;

“limited liability company” or “LLC” means a limited liability company formed or continued under this Act;

“liquidator” means a person carrying out the winding up of an LLC;

“LLC agreement” means an agreement entered into by the members of an LLC in accordance with section 12;

“LLC interest” means the totality of a member’s interest including all rights incidental to membership as may be provided in an LLC agreement or otherwise provided by this Act, a member’s share of the profits and losses of an LLC and a member’s right to receive distributions of the LLC’s assets;

“manager” means a person appointed to be a manager of an LLC under section 29;

“member” means a person who has been admitted to membership of an LLC in accordance with section 21 or, in the case of a foreign LLC, in accordance with the laws of the foreign jurisdiction under which the foreign LLC is formed;

“Minister” means the Minister responsible for finance;

“person” means an individual, partnership (whether general or limited and whether domestic or foreign), LLC, foreign LLC, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity;

“Register” means the Register of Limited Liability Companies maintained by the Registrar in accordance with section 11;

“Registrar” means the Registrar of Companies;

“relevant licence” means—

- (a) a licence issued under the Company Management Act; or
- (b) a licence issued under the Trust Companies and Offshore Banking Act.

### **Name of LLC**

2. The name of an LLC—

- (a) must contain the words “Limited Liability Company” or the abbreviation “LLC”;
- (b) may contain the name of a member or manager;
- (c) must not be the same as or similar to the name of any corporation, limited partnership, business, trust or LLC, registered, formed or organised under the laws of Anguilla or reserved under this or any other Act; and
- (d) must not be a name prohibited—
  - (i) by any other law in force in Anguilla, or
  - (ii) by regulations made by the Governor under section 90.

### **Reservation of name**

3. (1) The exclusive right to the use of a name may be reserved by—

- (a) any person intending to form an LLC under that name;
- (b) any LLC that proposes to change its name; or
- (c) any foreign LLC (by whatever named called) intending to continue under this Act.

(2) The reservation of a specified name shall be made by filing with the Registrar an application executed by the applicant in prescribed form specifying the name to be reserved and the name and address of the applicant.

(3) If he approves the name and determines that it is available for use by an LLC, the Registrar shall reserve the name for the exclusive use of the applicant for a period of 120 days.

(4) A name reserved under subsection (3) may, by application made under subsection (2), be reserved for successive periods of 120 days.

(5) The prescribed fee shall be paid—

- (a) upon the filing of an application to reserve a name under subsection (2); and
- (b) upon the filing of each application to renew the reservation of a name under subsection (4).

### **Name change**

**4.** (1) Where an LLC is formed or continued under, or changes its name to, a name that—

- (a) is reserved under section 3;
- (b) does not comply with section 2; or
- (c) is, in the opinion of the Registrar, for any reason objectionable;

the Registrar may, by serving written notice on the LLC, direct it to change its name within such period of time as he may stipulate.

(2) If an LLC does not change its name to a name that complies with section 2 within such time as the Registrar specifies in the written notice served under subsection (1), the Registrar may assign a new name to the LLC and enter the assigned name in the Register.

(3) If the Registrar assigns a new name to an LLC under this section—

- (a) he must issue a new certificate of formation for the LLC recording its new name; and
- (b) the name of the LLC is changed to the name assigned by the Registrar.

(4) An LLC that, after the issue by the Registrar of a new certificate of formation under paragraph (3)(a), uses the former name of the LLC commits an offence.

### **Registered office**

**5.** (1) An LLC shall at all times have a registered office in Anguilla.

(2) An LLC shall maintain, at its registered office, a register containing the—

- (a) name and address of every member and manager;
- (b) date on which every member and manager is appointed;
- (c) date every member and manager ceases to be a member or manager; and
- (d) the amount of capital every member is entitled to.

*(Act 3/2014, s. 1)*

(3) An LLC who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a fine of \$10,000.

*(Act 3/2014, s. 1)*

(4) The registered office must be provided by a person who holds a relevant licence.

(5) On the formation of an LLC, its registered office is as specified in its articles of formation.

(6) An LLC may change the location of its registered office by filing a notice in prescribed form with the Registrar.

(7) The change of registered office takes effect upon the notice being registered by the Registrar.

(8) If the person providing the registered office for an LLC ceases to hold a relevant licence, the LLC shall, within 14 days of becoming aware that the person concerned has ceased to hold a relevant licence, change the location of its registered office so that it is provided by a person who holds a relevant licence.

(9) An LLC that contravenes subsection (8) commits an offence.

### **Registered agent**

**6.** (1) An LLC shall at all times have a registered agent in Anguilla.

(2) The registered agent of an LLC must be a person who holds a relevant licence.

(3) On the registration of an LLC its registered agent is as specified in its articles of formation.

(4) An LLC may change its registered agent by filing a notice in prescribed form with the Registrar.

(5) The change of registered agent takes effect upon the notice being registered by the Registrar.

(6) If the registered agent of an LLC ceases to hold a relevant licence, the LLC shall, within 14 days of becoming aware that its registered agent has ceased to hold a relevant licence, change its registered agent to a person who holds a relevant licence.

(7) An LLC that contravenes subsection (6) commits an offence.

### **Registered agent ceasing to act for LLC**

**7.** (1) If the registered agent of an LLC desires to cease to act as its registered agent, he must give not less than 30 days written notice of his intention to do so in accordance with subsection (2).

(2) A notice given under subsection (1) must be sent—

(a) to a member of the LLC at the address of the member last known to the registered agent; or

- (b) if the registered agent is not aware of the identity of any member of the LLC, to the person from whom he last received instructions concerning the LLC.
- (3) The registered agent must, within 7 days of sending a notice in accordance with subsection (2), file a copy of the notice with the Registrar.
- (4) If, at the time of expiry of the notice given under subsection (1), the LLC has not filed a notice of change of registered agent under section 6(4), the Registrar shall publish a notice in the *Gazette* that, unless the LLC files notice of a change of registered agent within 30 days of the date of the publication of the notice in the *Gazette*, it will be struck off the Register and dissolved.
- (5) If an LLC fails to file a notice of change of registered agent within 30 days of publication of a notice in the *Gazette* under subsection (4), the Registrar must strike the LLC off the Register whereupon it is dissolved, and the Registrar must publish a notice of the striking off and dissolution of an LLC under this section in the *Gazette*.
- (6) The striking of an LLC from the Register is effective from the date of the notice published in the *Gazette*.
- (7) A registered agent who contravenes subsection (3) commits an offence.

#### **Nature of business**

- 8.** (1) Subject to subsection (2), an LLC may carry on any lawful business, purpose or activity not prohibited by any law for the time being in force in Anguilla, whether or not for profit.
- (2) An LLC shall not—
    - (a) carry on a banking or trust business within the meaning of the Trust Companies and Offshore Banking Act;
    - (b) carry on business as an insurance or a reinsurance company, insurance agent, insurance broker or insurance manager;
    - (c) carry on company management business within the meaning of the Company Management Act; or
    - (d) own or hold an interest, whether legal or beneficial, in real property located in Anguilla, other than property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained.
  - (3) For the purposes of paragraph (2)(d)—
    - (a) an LLC is deemed to own or hold an interest in real property located in Anguilla if it owns or holds, legally or beneficially, securities in an Anguilla company or in any other body corporate—
      - (i) that owns or holds an interest, legal or beneficial, in real property located in Anguilla, or

(ii) that owns or holds, legally or beneficially, securities in an Anguilla company or in any other body corporate that owns or holds an interest, legal or beneficial, in real property located in Anguilla; and

(b) for the purposes of determining whether an Anguilla company or other body corporate referred to in paragraph (a) owns or holds an interest in real property located in Anguilla, the criteria specified under paragraph (a) shall be applied to it as if it was the LLC.

(4) Subject to subsection (2), an LLC shall possess and may exercise all the powers and privileges granted by this Act or by any other law or by its articles or agreement, together with any powers incidental thereto, including the power to—

- (a) sue and be sued, complain and defend, in its name;
- (b) purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest in it, wherever located;
- (c) sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
- (d) lend money to and otherwise assist its members;
- (e) purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares or other interests in or obligations of other LLCs, domestic or foreign corporations, associations, general or limited partnerships, or individuals, or direct or indirect obligations of Anguilla or of any government, state, territory, governmental district or municipality or of any instrumentality of it;
- (f) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the LLC may determine, issue notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises and income;
- (g) lend money for its proper purposes, invest and reinvest its funds and take and hold real property and personal property for the payment of funds so loaned or invested;
- (h) conduct its business, carry on its operations and have and exercise the powers granted by this Act in Anguilla, or in any foreign jurisdiction;
- (i) elect or appoint managers and agents and define their duties and fix their compensation;
- (j) make and alter operating agreements, not inconsistent with its articles or with the laws of Anguilla, for the administration and regulation of the affairs of the LLC;
- (k) indemnify a member or manager or former member or manager of the LLC against expenses actually and reasonably incurred by him or it in connection with the defense of an action, suit or proceeding, civil or criminal, in which he or it is made a party by

reason of being or having been such member or manager, except in relation to matters as to which he or it shall be adjudged in the action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, and to make any other indemnification that is authorised by the articles or by an article of the operating agreement or resolution adopted by the members after notice;

- (l) cease its activities and dissolve; and
- (m) become a member of a general partnership, limited partnership, joint venture or similar association, company or any other LLC;

so far as these powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the LLC.

- (5) An LLC that contravenes subsection (2) commits an offence.

### **Business transactions**

**9.** Except as provided in the articles or the 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 specific obligations of, provide collateral for, and transact other business, with an LLC and has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

### **Indemnity**

**10.** Subject to such standards and restrictions, if any, as are specified in the articles or in its LLC agreement, an LLC may indemnify and hold harmless any member or manager or other person from and against any claims and demands whatsoever.

## PART 2

### FORMATION OF LLC

#### **Formation of an LLC**

**11.** (1) One or more persons may form an LLC by signing articles of formation in prescribed form and filing them with the Registrar.

- (2) The articles of formation must contain—
  - (a) the name of the LLC;
  - (b) the address of its first registered office and the name and address of its first registered agent;
  - (c) if the LLC proposes to have a specific date of dissolution, the latest date on which the LLC must dissolve;
  - (d) if the LLC will be formed on a date subsequent to the date of filing of the articles of formation, that date; and

(e) any other matters as the members may determine.

(3) An LLC is formed on the date specified in the certificate of formation issued by the Registrar under subsection (6).

(4) An LLC formed under this Act shall be a separate legal entity, the existence of which as a separate legal entity shall continue until it is dissolved.

(5) If he is satisfied that the requirements of this Act in respect of formation have been complied with, the Registrar must, upon receipt of articles of formation, register the articles in the Register and issue a certificate of formation.

(6) The certificate of formation must specify the date of the formation of the LLC, which must be—

(a) the date of registration of the articles of formation; or

(b) if a later date for the formation of the LLC is specified in the articles of formation, that date.

### **LLC agreement**

**12.** A written agreement concerning the affairs of an LLC and the conduct of its business may be entered into by the members of the LLC either before, after or at the time of the signing of articles of formation and the agreement shall take effect, whenever entered into, on the formation of the LLC or upon such other date as may be provided in the agreement.

### **Amendment of articles of formation**

**13.** The articles of formation may be amended at any time and for any lawful purpose by filing articles of amendment in prescribed form with the Registrar specifying—

(a) the name of the LLC; and

(b) the amendment to the articles.

### **Signing of documents**

**14.** (1) A document required or permitted by this Act to be filed with the Registrar shall be signed by one or more persons authorised by the LLC.

(2) Unless otherwise provided in the articles or the LLC agreement, a person may—

(a) sign any document required or permitted to be filed under this Act or any amendment thereof; and

(b) enter into an LLC agreement or agree to any amendment thereof;

by an agent authorised by that person, including an attorney-in-fact.

(3) It is not necessary for an authorisation given under subsection (2), including a power of attorney, to be in writing, sworn to, verified or acknowledged or filed with the Registrar but any authorisation in writing must be retained by the LLC.



(4) The signing of a document by an authorised person constitutes a declaration that the individual believes the facts stated therein are true.

### **Powers of Court**

**15.** (1) If a person required to sign a document under this Act fails or refuses to do so, any other person who is adversely affected by the failure or refusal may apply to the Court to direct the signing of the document.

(2) If, on an application made under subsection (1), the Court finds that any person required to sign a document has failed or refused to do so, it—

(a) may order the person to sign the document; and

(b) may order the Registrar to register the document, whether or not the document has been signed.

(3) If a person required to execute 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 apply to the Court to direct the execution of the LLC agreement or amendment thereof.

(4) If the Court finds in respect of subsection (1) that 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 requirements**

**16.** (1) The original signed copy of the articles of formation or any articles of amendment or cancellation (or of any judicial order of amendment or cancellation), and of any articles of merger or consolidation and of any restated articles shall be filed with the Registrar.

(2) A person who signs a document as an agent or fiduciary need not show evidence of his authority as a prerequisite to filing.

(3) The amendment or restatement of articles of formation shall be effective upon—

(a) the acceptance by the Registrar for filing of a certificate of amendment or restatement;

(b) the filing of a judicial order of amendment; or

(c) such future date or time as may be specified in the certificate of amendment or restatement or the judicial order of amendment, as the case may be.

### **Certificate of formation is notice**

**17.** The fact that a certificate of formation has been issued by the Registrar is notice that the entity formed in connection with the issue of the certificate of formation is an LLC formed under the laws of Anguilla and of all other facts specified therein as required pursuant to section 11.

### **Restated articles**

**18.** (1) An LLC may integrate into a single instrument all the provisions of its articles of formation that are then in effect and operative as a result of the filing of one or more articles of amendment

pursuant to this Part and may at the same time amend its articles of formation by adopting restated articles of formation.

(2) If the restated articles of formation merely restate and integrate but do not further amend the original articles of formation, as amended or supplemented by any articles of amendment filed under this Act, the articles must be specifically designated “Restated Articles of Formation” together with such other words as the LLC considers appropriate and must be signed by an authorised person and filed in prescribed form in accordance with section 16.

(3) If the restated articles of formation restate and integrate and also further amend in any respect the articles of formation, as amended or supplemented, the articles must be specifically designated “Amended and Restated Articles of Formation” together with such other words as the LLC considers appropriate and must be signed by an authorised person and filed in prescribed form in accordance with section 16.

(4) The restated articles of formation shall state—

- (a) the LLC’s present name;
- (b) the name under which it was originally formed (if different);
- (c) the date of filing of its original articles of formation and the future effective date or time (which must be a date or time certain) of the restated articles if they are not to be effective on filing; and
- (d) that they are duly signed and are being filed in accordance with this section.

(5) If the restated articles only restate and integrate and do not further amend an LLC’s articles of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated articles, it shall state that fact as well.

(6) If he is satisfied that the relevant requirements of this Act have been complied with, the Registrar must, upon receipt of restated articles of formation, register the articles in the Register and issue a certificate of registration of the restated articles of formation.

(7) The certificate of registration of the restated articles of formation must specify the date upon which the restated articles are effective, which must be—

- (a) the date of registration of the restated articles of formation; or
- (b) if a later date is stated in the articles under paragraph (4)(c), that date.

(8) Any amendment or change effected by the restatement and integration of the articles of formation is subject to any other provision of this Act that would apply if separate articles of amendment had been filed to effect such amendment or change.

### **Merger and consolidation**

**19.** (1) In this section, “other business entity” means a company, or business trust or association, a real estate investment trust, a common law trust, or any other unincorporated business, including a partnership (whether general or limited), and a foreign LLC, but excluding a domestic LLC.

(2) Pursuant to an agreement of merger or consolidation, a domestic LLC may merge or consolidate with or into one or more LLCs or other business entities formed or organised under the laws of Anguilla or of any foreign jurisdiction, with such domestic LLC or other business entity as the agreement provides, being the surviving or resulting domestic LLC or other business entity.

(3) Unless otherwise provided in the LLC agreement, a merger or consolidation shall be approved by each domestic LLC that is to merge or consolidate by the members or, if there is more than one class or group of members, then by each class or group of members and in either case, by members who own more than 50% of the then current percentage or other interest in the profits of the domestic LLC owned by all of the members or by the members in each class or group, as appropriate.

(4) In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic LLC or other business entity that is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic LLC or other business entity or, in addition to or in lieu thereof, may be exchanged or converted into cash, property, rights or securities of, or interests in, an LLC or other business entity that is not the surviving or resulting LLC or other business entity in the merger or consolidation.

(5) Notwithstanding prior approval, an agreement or merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(6) If a domestic LLC is merging or consolidating under this section, the domestic LLC or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation with the Registrar that shall state—

- (a) the name and jurisdiction of formation or organisation of each of the LLCs or other business entities that propose to merge or consolidate;
- (b) that an agreement of merger or consolidation has been approved and executed by each of the domestic LLCs or other business entities that propose to merge or consolidate;
- (c) the name of the surviving or resulting domestic LLC or other business entity;
- (d) the future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;
- (e) that the agreement of merger or consolidation is filed at a place of business of the surviving or resulting domestic LLC or other business entity, and the address thereof; and
- (f) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic LLC or any person holding an interest in any other business entity that proposes to merge or consolidate.

(7) Unless a future effective date or time is provided in articles of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the Registrar of articles of merger or consolidation in prescribed form.

(8) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic LLC that is not the surviving or resulting entity in the merger or consolidation.

(9) An agreement of merger or consolidation approved in accordance with subsection (2) may—

- (a) effect any amendment to the LLC agreement; or
- (b) effect the adoption of a new LLC agreement for an LLC that is the surviving or resulting LLC in the merger or consolidation.

(10) Any amendment to an LLC agreement or adoption of a new LLC agreement made pursuant to subsection (9) shall be effective at the effective time or date of the merger or consolidation and this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an LLC agreement or other agreement or as otherwise permitted by law including that the LLC agreement of any constituent LLC to the merger or consolidation (including an LLC formed for the purpose of consummating a merger or consolidation) shall be the LLC agreement of the surviving or resulting LLC.

### **Effect of merger**

**20.** (1) When any merger or consolidation is effected under this section, all the rights, privileges and powers of each of the domestic LLCs and other business entities that have merged or consolidated, and all property whether real or personal, and all debts due to any of the domestic LLCs and other business entities, and all other things and causes of action belonging to each of such domestic LLCs and other business entities, shall vest in the surviving or resulting domestic LLC or other business entity.

(2) The title to any real property vested by deed or otherwise, under the laws of Anguilla or elsewhere, in any such domestic LLC or other business entity, shall not revert or be in any way impaired by reason of this Act, but all rights of creditors and all liens upon any property of any domestic LLC or other business entity shall be preserved unimpaired, and all debts, liabilities and duties of each of the domestic LLCs or other business entity that have merged or consolidated shall thenceforth attach to the surviving or resulting domestic LLC or other business entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it.

(3) Subject to any agreement to the contrary, a merger or consolidation of a domestic LLC, including a domestic LLC that is not the surviving or resulting entity in the merger or consolidation, does not require the domestic LLC to wind up its affairs under section 55 or pay its liabilities and distribute its assets under section 59.

## **PART 3**

### **MEMBERS**

#### **Admission of members**

**21.** (1) A person acquiring an LLC interest is a member of the LLC upon the later of the following occurrences—

- (a) the formation of the LLC; or
  - (b) the time provided in and upon compliance with the LLC agreement or, if the agreement does not so provide, when the person's admission appears in the records of the LLC.
- (2) After the formation of an LLC, a person acquiring an interest in it is admitted as a member of the LLC—
- (a) in the case of a person acquiring an LLC interest directly from the LLC, when the person's admission appears in the records of the LLC upon compliance with the LLC agreement or, if the LLC agreement does not so provide, upon the consent of all members; and
  - (b) in the case of an assignee of an LLC interest, when the person's admission appears in the records of the LLC upon compliance with the LLC agreement or, if the LLC agreement does not so provide, as provided in Part 7.
- (3) A person may be admitted to an LLC as a member of it and may receive an interest without making a contribution or being obligated to make a contribution to the LLC.
- (4) The terms and conditions of a person's admission to the LLC may be specified in a separate agreement with the LLC and that agreement is deemed incorporated into the LLC agreement.

#### **Classes and voting rights of members**

**22.** (1) An LLC agreement may provide for classes or groups of members having such relative rights, powers and duties as the agreement may provide, and may make provision for the creation in the manner provided 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 ranking prior to existing classes and groups of members.

(2) An LLC agreement may provide for the taking of any 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 interests that was not previously outstanding.

(3) An LLC agreement may grant to all or certain identified members or a specified class or group of 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.

(4) An LLC agreement that grants a right to vote may specify provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any 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.

(5) An LLC agreement may provide that a member's share of the profits, losses and other distributions from the LLC may vary from time to time and may vary from a member's proportionate voting rights.

**Liability to third parties**

**23.** Except as otherwise provided in section 47, the debts, obligations and liabilities of an LLC, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC, and no member or manager of an LLC is liable personally for any such debt, obligation or liability of the LLC solely by reason of being a member or manager of the LLC.

**Ceasing to be member of LLC**

**24.** (1) Unless otherwise provided in an LLC agreement, or with the written consent of the members, a person ceases to be a member of an LLC when he—

- (a) makes an assignment for the benefit of creditors;
- (b) files for voluntary winding up;
- (c) is adjudged a bankrupt or insolvent, or has entered against him an order for relief, in any bankruptcy or insolvency proceedings;
- (d) files a petition or answer seeking for himself any reorganisation, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
- (e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature;
- (f) 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 his properties;
- (g) dies;
- (h) becomes incompetent; or
- (i) resigns or is expelled.

(2) Unless otherwise provided in an LLC agreement, or with the written consent of all members, a person ceases to be a member of an LLC 120 days after the commencement of any proceedings against the member seeking reorganisation, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law, if the proceedings have not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

**Access to and confidentiality of information**

**25.** (1) Each member of an LLC has the right, subject to reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be specified in the LLC agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the LLC from time to time upon reasonable request for any purpose reasonably related to the member's interest as a member of the LLC—

- (a) true and full information regarding the status of the business and financial condition of the LLC;
- (b) a current list of the name and last known business, residence or mailing address of each member, holder of an economic interest and manager;
- (c) a copy of any written LLC agreement and articles of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the agreement and any articles and all amendments thereto have been executed;
- (d) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and that each member has agreed to contribute in the future, and the date on which each became a member; and
- (e) such other information regarding the affairs of the LLC as is just and reasonable.

(2) Each manager has the right to examine the information described in subsection (1) for a purpose reasonably related to his position as manager.

(3) Unless otherwise provided in the LLC agreement, the manager of an LLC may not keep confidential from the members any information, trade secrets or other information of the LLC.

(4) Any request by a member under this section must be in writing and state the purpose of the request.

(5) If—

- (a) a request made by a member or manager under this section is refused or not complied with; or
- (b) a manager of an LLC acts in breach of subsection (3);

any interested person may, on notice to the LLC, apply to the Court for an order to require the LLC, manager or members to comply with its obligations under this section, and the Court may so order and make any further order it thinks fit.

### **Form of records**

**26.** An LLC may maintain its records in other than written form if such form is capable of conversion into written form within a reasonable time.

### **Remedies for breach**

**27.** An LLC agreement may provide that—

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

PART 4  
MANAGERS

**Managers**

**28.** (1) A person may be named or designated as a manager of an LLC as specified in section 29(2).

(2) An LLC agreement may provide for the annual or other election of the manager or managers.

**Management of LLC**

**29.** (1) Unless otherwise provided in an LLC agreement, the management of an LLC shall vest in its members in proportion to their then current percentage share in the profits of the LLC regardless whether or not the economic interest of a member may have been previously conveyed to another, members owning more than 50% of that percentage share or other interest in the profits having a controlling interest.

(2) Notwithstanding subsection (1), if an LLC agreement provides for the management, in whole or in part, of an LLC by a manager, the management of the LLC to the extent so provided shall vest in the manager who shall be chosen by the members in the manner provided in the agreement.

(3) The manager shall hold the offices and have the responsibilities accorded to him by the members as specified in an LLC agreement.

(4) Subject to section 42, a manager ceases to be manager as provided in the agreement.

**Contributions by manager**

**30.** (1) Unless otherwise provided in an LLC agreement, a manager of an LLC may make contributions to the company and share in the profits and losses of, and distributions from, the LLC 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 the LLC agreement has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his participation in the LLC as a member.

**Classes and voting rights**

**31.** (1) An LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the agreement provides, and may make provision for the creation in the manner provided in the 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 ranking prior to existing classes and groups of managers.

(2) An LLC agreement may provide for the taking of any action, including the amendment of the agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the LLC agreement a class or group of 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. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

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

### **Remedies for breach**

**32.** An LLC agreement may provide that—

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

### **Reliance on reports and information by member or manager**

**33.** A member or manager of an LLC is entitled to rely in good faith upon the records of the LLC and upon such information, opinions, reports or statements presented to the LLC by any of its other managers, members, officers, employees, or committees of the LLC, or by any other person as to matters the members or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the LLC or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

## PART 5

### FINANCIAL MATTERS

#### **Division 1**

#### *Contributions of members; profits and losses and related matters*

### **Form of contribution**

**34.** The contribution of a member to an LLC 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**

**35.** (1) Except as provided in the LLC agreement or subsection (3), a member, his estate, successors, assignees, trustees or guardians is liable to the LLC to perform any promise to contribute cash or property, or to perform services.

(2) If a member does not make the required contributions of property or services, he is liable at the option of the LLC to contribute cash equal to that portion of the agreed value (as stated in the records of the LLC) of the contribution that has not been made, and this option is in addition to, and not in lieu of, any other rights, including the right to specific performance, that the LLC may have against the member under the agreement or other law.

(3) Unless otherwise provided in an LLC agreement, the obligation of a member to make a contribution or return of money or other property paid or distributed in contravention of this Act may be compromised only with consent of all the members.

(4) Notwithstanding the compromise, a creditor of an LLC who extends credit after the entering into of an LLC agreement or an amendment thereto that, 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.

(5) A conditional obligation of a member to make a contribution or return money or other property to an LLC may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of an LLC prior to the time the call occurs.

(6) An LLC agreement may provide that the interest of any member who fails to make any contribution that he is liable to make is subject to such penalties as are specified in the agreement.

(7) The penalty may take the form of reducing or eliminating the defaulting member's proportionate interest in an LLC, subordinating his interest to that of non-defaulting members, a forced sale of his LLC interest or forfeiture of the loan by other members of the amount necessary to meet his commitment, a fixing of the value of his LLC interest by appraisal or by formula and redemption or sale of his LLC interest at such value, or other penalty.

### **Profits and losses**

**36.** The profits and losses of an LLC shall be allocated among the members, and among classes or groups of members, in the manner provided in the agreement and if the agreement does not so provide, any profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

### **Allocation of distributions**

**37.** Distributions of cash and other assets of the LLC shall be allocated among the members, and among classes or groups of members, in the manner provided in an LLC agreement and, if the LLC agreement does not so provide, distributions shall be made on the basis of the agreed value (stated in the records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

**Division 2***Records of Accounts***Maintenance of proper accounting records**

**38.** (1) The manager of an LLC shall keep proper accounting records including: accounts, books, deeds, contracts, vouchers and receipts, for—

- (a) all sums of money received and expended by the LLC and the matters for which the receipt and expenditure takes place;
- (b) all sales and purchases of goods and services and other related transactions for the LLC; and
- (c) the assets and liabilities of the LLC.

(2) The accounting records shall be sufficient to explain all monetary transactions by the LLC and shall—

- (a) contain sufficient details to enable a transaction to be understood;
- (b) disclose with reasonable accuracy the financial position of the LLC at any time; and
- (c) be in a format that allows financial statements to be prepared and audited.

*(Act 3/2014, s. 2(c))*

**Period for which accounting records shall be maintained**

**39.** The period for which accounting records under section 38 shall be maintained is 6 years beginning on the date—

- (a) on which all activities taking place in the course of the transaction in question were completed; or
- (b) of the ending of the business relationship for whose formation the record was compiled.

*(Act 3/2014, s. 2(c))*

**Offences and Penalties**

**40.** A manager, director or officer of an LLC who breaches any section in Division 2 or who authorised, permitted or acquiesced in the breach of any section in Division 2, commits an offence and is liable on summary conviction to a penalty of \$25,000.

*(Act 3/2014, s. 2(c))*

## PART 6

## DISTRIBUTION AND RESIGNATION

**Interim distribution**

**41.** Except as provided in 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 an LLC distributions before his resignation from the LLC and before the dissolution and winding up thereof.

**Resignation of manager**

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

(2) If an LLC agreement provides that a manager does not have the right to resign as manager of an LLC, a manager may nevertheless resign as manager at any time by giving written notice thereof to the members and other managers.

(3) If the resignation of a manager is in contravention of an LLC agreement, in addition to any remedies otherwise available under the law, an LLC may recover from the resigning manager damages for breach in the amount otherwise distributable to the resigning manager.

**Resignation of members**

**43.** (1) A member may resign from an LLC at the time or upon the happening of events specified in the agreement and in accordance with the agreement.

(2) Except as otherwise provided in the LLC agreement, a member may resign by giving written notice to the LLC at its registered office and to each member and manager at the addresses specified in the records of the LLC.

(3) A resignation does not relieve the resigning member of the obligation to make a capital contribution.

(4) Notwithstanding the provisions of this Act, an LLC agreement may provide that a member may not resign from an LLC or assign his interests therein prior to the dissolution and winding up of the LLC.

**Distribution upon resignation**

**44.** Except as otherwise provided in the LLC agreement, a member is entitled on his resignation to receive any distribution to which he is entitled under the agreement, and if not otherwise provided in the agreement, within a reasonable time after resignation, the fair value of his LLC interest as of the date of resignation based upon his right to share in distributions from the company.

**Distribution in kind**

**45.** (1) Except as provided in the LLC agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from an LLC 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 an LLC to the extent that the percentage of the asset distributed to

him exceeds a percentage of that asset that is equal to the percentage in which he shares in distributions from the company.

**Right to distribution**

**46.** (1) Subject to sections 47 and 59, and unless otherwise provided in an LLC agreement, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the LLC with respect to the distribution.

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

**Limitation on distribution**

**47.** (1) An LLC shall not make a distribution to a member or holder of an economic interest to the extent that after giving effect to the distribution, all liabilities of the LLC, other than liabilities to members on account of their LLC interests and liabilities for which the recourse of creditors is limited to specific property of the LLC, exceed the fair value of the assets of the company. The fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the LLC only to the extent that the fair value of that property exceeds that liability.

(2) A member or holder of an economic interest who receives a distribution in contravention of subsection (1) and who knew at the time of the distribution that the distribution was in breach of the subsection is liable to the LLC for the amount of the distribution.

(3) Unless otherwise agreed, a member who receives a distribution from an LLC is not liable under this Act or other law for the amount of the distribution after the expiration of 3 years from the date of the distribution unless any action to recover the distribution from that member is commenced prior to the expiration of the 3 year period and an adjudication of liability against the member is made in the action.

(4) An LLC that contravenes subsection (1) commits an offence.

**PART 7****ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS****Nature of interest**

**48.** (1) An LLC interest is personal property.

(2) A member has no interest in specific LLC property.

**Assignment of interest**

**49.** (1) Unless otherwise provided in the LLC agreement, an LLC interest is assignable in whole or in part with the consent of the other members.

(2) Without such consent as provided in subsection (1)—

(a) the assignee of a member's interest has no right to participate in the management of the business and affairs of an LLC;

(b) an assignment entitles the assignee to share in such profits and losses, to receive such distributions, and allocation of income, gain, loss, deduction or credit or similar item to which the assignor was entitled, to the extent assigned.

(3) Unless otherwise provided in an LLC agreement, a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of his member's interest.

(4) Unless otherwise provided in the LLC agreement, the pledge of or granting of a security interest, lien or other encumbrance in or against any or all of the economic interests of a member does 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) An LLC agreement may provide that a member's interest in the company may be evidenced by a certificate of the interest issued by the company.

(6) Unless otherwise provided in an LLC agreement and except to the extent assumed by agreement, until an assignee of a member's interest becomes a member, the assignee has no liability solely by reason of the assignment other than the return of capital contributions received by such assignee.

(7) A holder of an economic interest may bring an action to enforce his rights to receive a distribution of profits, losses or other distribution due to him from the LLC or to enforce an accounting for distributions that were improperly made.

#### **Right of judgment creditor**

**50.** (1) On application to the Court by any judgment creditor of a member, the Court may charge the economic interest of the member with payment of the unsatisfied amount of the judgment.

(2) To the extent so charged, the judgment creditor has only the rights of an assignee of the economic interest.

(3) This Act does not deprive any member of the benefit of any exemption laws applicable to his member's interest.

#### **Right of assignee to become member**

**51.** (1) An assignee of a member's interest may become a member as provided in the LLC agreement—

(a) with the approval of the members of the LLC other than the member assigning his interest; or

(b) upon compliance with any procedure provided for in the LLC agreement.

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

(3) Notwithstanding subsection (2), and subject to subsection (4), unless otherwise provided in an LLC agreement, an assignee who becomes a member assumes the obligations of his assignor to

make contributions as provided in section 35, but is not liable for the obligations of his assignor under Part 6.

(4) The assignee is not liable for liabilities, including the obligations of his assignor to make contributions as provided in section 35, unknown to the assignee at the time he became a member and that could not be ascertained from the agreement.

(5) Whether or not an assignee of a member's interest becomes a member, the assignor is not released from his liability to an LLC under Parts 5 or 6.

#### **Estate of deceased or incompetent member**

**52.** (1) Unless otherwise provided in an LLC agreement, if a member dies, becomes bankrupt or a Court of competent jurisdiction adjudges him to be incompetent to manage his affairs, the member's executor, administrator, guardian, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power under an LLC agreement of an assignee to become a member.

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

### PART 8

#### DISSOLUTION

##### **Dissolution**

**53.** The term of an LLC may be perpetual or as otherwise provided in the LLC agreement.

##### **Dissolution and winding up by the Court**

**54.** (1) An order for the liquidation and dissolution of an LLC may be made by the Court if—

- (a) the LLC carries on business in breach of section 8;
- (b) the LLC carries on business without a member;
- (c) the LLC has seriously or persistently failed to comply with this Act;
- (d) the LLC is unable to pay its debts;
- (e) the Court considers that it would be just and equitable for the LLC to be dissolved and wound up; or
- (f) the Court considers that it is not reasonably practicable for the business to be carried on in conformity with the agreement.

(2) An application to the Court for an order under subsection (1) may be made—

- (a) by the Registrar upon any one or more grounds set out in subsection (1);

- (b) by an interested person upon the grounds set out in paragraph (1)(c), (d) or (e); or
- (c) by a member or manager upon the grounds set out in paragraph (1)(f).

(3) Unless the Court otherwise orders, where the Court makes an order under this section, the provisions of the Companies Act shall apply as if the LLC was a company being liquidated and dissolved by the Court under section 216(3) of that Act.

### **Winding up**

**55.** (1) Unless otherwise provided in the LLC agreement, a manager or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50% of the then current percentage share or other interest in the profits of the LLC owned by all of the members or by the members in each class or group, as appropriate, may wind up the company's affairs, but the Court, upon cause shown, may wind up the company's affairs upon application of any member or manager, his legal representative or assignee, and in connection therewith may appoint a liquidator.

(2) Upon the dissolution of an LLC, the persons winding up the company's affairs may, in the name of, and for and on behalf of, the company, prosecute and defend suits, whether civil, criminal or administrative, settle and close the company's business, dispose of and convey the company's property, discharge or make reasonable provision for the company's liabilities, and distribute to the members any remaining assets of the company, without affecting the liability of members and managers and without imposing liability on a liquidator.

### **Notice to the Registrar**

**56.** (1) Notice in writing must be given to the Registrar of the matters set out in paragraphs (a) to (d) by the persons specified in the paragraph—

- (a) an order for judicial dissolution under section 54, by the applicant for the order;
- (b) the winding up of an LLC under section 55, by the person carrying out the winding up;
- (c) an order for the winding up by the Court of an LLC under section 55, by the applicant for the order; and
- (d) the appointment of a liquidator under section 55, by the liquidator;

within 21 days of the order, commencement of the winding up or appointment of the liquidator, as the case may be.

(2) A person who contravenes subsection (1) commits an offence.

### **Dissolution of LLC with no property or liabilities**

**57.** (1) Unless otherwise provided in the LLC agreement, an LLC that has no property and no liabilities may file articles of dissolution in prescribed form.

(2) Articles of dissolution must be signed by the manager or by the registered agent of the LLC.



(3) If he is satisfied that the requirements of this Act in respect of dissolution have been complied with, the Registrar may, upon receipt of articles of dissolution, issue a certificate of dissolution and strike the company off the Register.

(4) The company is dissolved on the date shown in its certificate of dissolution.

### **Dissolved LLC to be struck from the Register**

**58.** The Registrar shall upon the conclusion of the dissolution and winding up of an LLC under this Part strike the LLC off the Register.

### **Distribution of assets**

**59.** (1) Upon the winding up of an LLC, the assets shall be distributed as follows—

- (a) to creditors, including members or managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under section 41;
- (b) unless otherwise provided in the agreement, to members and former members in satisfaction of liabilities for distributions under section 41 or 44; and
- (c) unless otherwise provided in the agreement, to members first for the return of their contributions and second respecting their economic interests, in the proportions in which the members share in distributions.

(2) An LLC that has been dissolved shall pay or make reasonable provision to pay all claims and liabilities, including all contingent, conditional or unmatured claims and liabilities that are known to the company and all claims and obligations that are known to the company but for which the identity of the claimant is unknown.

(3) If there are sufficient assets, the claims and liabilities shall be paid in full and provision for payment made shall be made in full.

(4) If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority and, among claims and liabilities of equal priority, rateably to the extent of assets available therefor.

(5) Unless otherwise provided in the agreement, any remaining assets shall be distributed as provided in this Act.

(6) A liquidator of the company who has complied with this section is not personally liable to the claimants of the dissolved LLC by reason of his actions in winding up the company.

### **Striking LLC from Register and dissolution**

**60.** (1) The Registrar may strike an LLC from the Register if—

- (a) the LLC contravenes any provision of this Act; or

(b) he is satisfied that the company has ceased to carry on business or is not in operation.

(2) Before striking an LLC from the Register under subsection (1), the Registrar shall send it a notice stating—

(a) the grounds on which it is intended to strike the LLC from the Register; and

(b) that, unless the LLC shows cause to the contrary and remedies the defaults set out in the notice, if any, within 90 days after the date of the notice, it will be struck from the Register.

(3) After the expiration of the time mentioned in the notice, the Registrar may, unless the LLC has shown cause to the contrary and, if appropriate, remedied the defaults set out in the notice, issue a certificate of strike off and dissolution.

(4) The LLC is struck off the Register and dissolved on the date shown in its certificate of dissolution.

(5) The Registrar shall publish a notice of the striking off and dissolution of the LLC in the *Gazette*.

(6) Where an LLC is struck off the Register and dissolved, the Registrar may, upon the application of an interested person made in the prescribed form and upon payment of the prescribed fee and any outstanding fees, revive it and issue a certificate in a form adapted to the circumstances.

(7) Any person who is aggrieved by the decision of the Registrar under this section, may appeal to the Court and if the Court is satisfied that it would be just for the LLC to be revived, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

### **Property of LLC struck off Register**

**61.** (1) Any property of an LLC that has not been disposed of at the date that it is struck off the Register vests in the Crown.

(2) When an LLC is revived under section 60, any property (other than money) that was vested in the Crown under subsection (1) on the dissolution of the LLC and that has not been disposed of must be returned to the LLC upon its restoration to the Register.

(3) The LLC is entitled to be paid out of the Consolidated Fund—

(a) any money received by the Crown under subsection (1) in respect of the LLC; and

(b) if property other than money vested in the Crown under subsection (1) in respect of the LLC and that property has been disposed of, an amount equal to the lesser of—

(i) the value of any such property at the date it vested in the Crown, and

(ii) the amount realized by the Crown by the disposition of that property.

**Disclaimer of property by the Crown**

**62.** (1) In this section, “onerous property” means—

- (a) an unprofitable contract; or
- (b) property of the LLC that is unsaleable, or not readily saleable, or that may give rise to a liability to pay money or perform an onerous act.

(2) Subject to subsection (3), the Minister may, by notice in writing published in the *Gazette*, disclaim the Crown’s title to onerous property that vests in the Crown under section 61.

(3) A statement in a notice disclaiming property under this section that the vesting of the property in the Crown first came to the notice of the Minister on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

(4) Unless the Court, on the application of the Minister, orders otherwise, the Minister is not entitled to disclaim property unless the property is disclaimed—

- (a) within 12 months of the date upon which the vesting of the property under section 61 came to the notice of the Minister; or
- (b) if any person interested in the property gives notice in writing to the Minister requiring him to decide whether he will or will not disclaim the property, within 3 months of the date upon which he received the notice;

whichever occurs first.

(5) Property disclaimed by the Minister under this section shall be deemed not to have vested in the Crown under section 61.

(6) A disclaimer under this section—

- (a) operates so as to determine, with effect from immediately prior to the dissolution of the LLC, the rights, interests and liabilities of the LLC in or in respect of the property disclaimed; and
- (b) does not, except so far as is necessary to release the LLC from liability, affect the rights or liabilities of any other person.

(7) A person suffering loss or damage as a result of a disclaimer under this section—

- (a) shall be treated as a creditor of the LLC for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and
- (b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

(8) The Court may, on an application made under paragraph (7)(b), make an order under that paragraph if it is satisfied that it is just for the disclaimed property to be delivered to or vested in the applicant.

PART 9  
CONTINUATION

**Definitions**

**63.** In this Part—

“certificate of formation”, when referring to a foreign LLC, means the articles, charter, statute, memorandum or other instrument defining the constitution of the company;

“foreign domicile” means the seat, *siège social*, registered office, or any other equivalent thereto under applicable law.

**Continuation**

**64.** Any foreign LLC may, subject to and upon compliance with the provisions of this Part, continue as an LLC under this Act.

**Application to continue**

**65.** Any foreign LLC may continue as an LLC under this Act by filing with the Registrar an application that must be executed in accordance with section 68 and filed and recorded in accordance with section 11.

**Contents of application**

**66.** The application must contain—

- (a) the date on which and the jurisdiction in which the LLC was formed, created or otherwise came into existence;
- (b) the name of the LLC;
- (c) the foreign jurisdiction that constitutes the domicile;
- (d) a declaration that the continuation has been approved by all necessary company action;
- (e) a declaration that the continuation is made in good faith and will not serve to hinder, delay or defraud existing members, creditors, claimants or other parties in interest;
- (f) the name and address of the LLC’s registered office and agent in Anguilla;
- (g) any other information required to be specified in the articles of formation under section 11; and
- (h) the amendments of its articles of formation or its equivalent that are to be effective upon filing the application.

**Documentation to be submitted**

- 67.** The application to continue shall be submitted to the Registrar and must be accompanied by—
- (a) a certificate evidencing the existence of the foreign LLC issued by an authorised officer of the foreign domicile; and
  - (b) a certified copy of the certificate of formation, with amendments, if any, and if the documents are not in English, a certified translation thereof.

**Who may execute application**

**68.** The application to continue must be in English and signed by any company officer, director, agent, trustee, manager, partner or any other person performing functions equivalent to those of any officer or manager, however named or described, who is authorised to sign such an application on behalf of the company.

**Certificate of continuation**

**69.** (1) Upon the filing of the application to continue and the documents referred to in sections 66 and 67 together with the payment of the prescribed fees, the Registrar shall, upon being satisfied that the other requirements of this Act are complied with, deliver to the LLC a certificate of continuation and the company shall become domiciled and domesticated in Anguilla as an LLC of Anguilla and shall thereafter be subject to this Act.

(2) The LLC is deemed to have come into existence on the date it was first formed.

(3) The LLC shall immediately adapt its agreement, registration, management and records to comply with the laws of Anguilla.

**Prior liabilities**

**70.** The continuation of an LLC under this Act does not affect any liabilities of the company incurred prior to the continuation.

**Applicable law**

**71.** The filing of an application to continue does not affect the choice of law applicable to prior liabilities and rights of the company, except that from the date the application is filed, the laws of Anguilla apply to the LLC to the same extent as if the company had been originally formed as an LLC of Anguilla on that date, and title to the company's assets shall also be governed by the laws of Anguilla.

**Departure to foreign jurisdiction**

**72.** Subject to the LLC agreement and this Act, an LLC may depart from Anguilla and become domiciled in a foreign jurisdiction in the manner provided under the laws of the foreign jurisdiction.

**Certificate of departure**

**73.** An LLC proposing to depart from Anguilla must file with the Registrar a certificate of departure containing the prescribed information in the prescribed form.

**Effective date of departure**

**74.** (1) Upon payment of all fees outstanding in Anguilla and upon compliance with this Act and applicable laws for transfer of domicile to the foreign jurisdiction, the departing company shall notify the Registrar as to the effective date of the transfer of domicile from Anguilla.

(2) If the Registrar is satisfied that the requirements of this Act with regard to departure have been complied with, he may issue a certificate of departure and from the date specified in the certificate, the company is deemed to have ceased to be an LLC domiciled in Anguilla.

**Continuation under Companies Act or International Business Companies Act**

**75.** (1) An LLC may continue—

- (a) as a company incorporated under the Companies Act in accordance with the provisions of that Act; or
- (b) as an international business company in accordance with the provisions of the International Business Companies Act.

(2) Upon the continuation of an LLC under the Companies Act or the International Business Companies Act, the Registrar shall strike the LLC from the Register and, with effect from the date of the LLC's continuation, it shall cease to be a company registered under this Act.

## PART 10

## DERIVATIVE ACTIONS

**Right to bring actions**

**76.** Except as otherwise provided in the LLC agreement, a member may bring an action in the Court in the name of the LLC to recover a judgment in its favour if managers or members with authority to do so have failed to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

**Proper plaintiff**

**77.** In a derivative action, the plaintiff must be a member at the time of the action and at the time of the transaction of which he complains, or his status as a member must have devolved upon him by operation of law or under the terms of an LLC agreement from a person who was a member at the time of the transaction.

**Complaint**

**78.** In a derivative action, the complaint shall specify the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

**Expenses**

**79.** If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the Court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from the company.

## PART 11

## EXEMPTIONS FROM TAX AND FROM REGISTRATION OF DOCUMENTS

**Exemptions from tax and from registration of documents**

**80.** (1) An LLC that does no business in Anguilla is exempt from any corporate tax, income tax, withholding tax, or other similar taxes based upon or measured by assets or income originating outside of Anguilla or in connection with other activities outside of Anguilla or in connection with matters of company administration that may occur in Anguilla.

(2) For the purpose of this section, no LLC shall be considered to be doing business in Anguilla solely because it engages in one or more of the following activities—

- (a) maintaining bank accounts in Anguilla;
- (b) holding meetings of managers or members in Anguilla;
- (c) maintaining company or financial records in Anguilla;
- (d) maintaining an administrative or managerial office in Anguilla with respect to assets or activities outside of Anguilla;
- (e) maintaining a registered agent in Anguilla; and
- (f) investing in stocks or entities of Anguilla companies or being a partner in an Anguilla partnership or a beneficiary of an Anguilla trust or estate.

(3) No estate, inheritance, succession or gift tax is payable by persons who are not persons resident or domiciled in Anguilla with respect to any interest of an LLC.

(4) Notwithstanding any provisions of the Stamp Act, but subject to subsection (5), the following are exempt from the payment of stamp duty—

- (a) an instrument relating to a transfer of property to or by an LLC; and
  - (b) an instrument relating to transactions in respect of an interest in or debt obligation of an LLC.
- (5) Subsection (4) does not apply—
- (a) to an instrument relating to a transfer of property located in Anguilla, including any interest in land in Anguilla and in shares in a company incorporated under the Companies Act; or
  - (b) to any transaction where the LLC concerned is, or at the time of the transaction was, in breach of section 8(2)(d).

**Exemptions for dividends and distributions**

**81.** In addition, any dividend or distribution by an LLC that does no business in Anguilla to another such company, or to individuals or entities that are not residents of Anguilla is exempt from

any tax in Anguilla that would otherwise be applicable to such company or the recipient of the dividend or distribution.

## PART 12

### INVESTIGATION OF LLCS

#### Definition

**82.** In this Part, “inspector” means an inspector appointed by an order under section 83(2).

#### Investigation order

**83.** (1) A member of an LLC or the Registrar may apply to the Court *ex parte* or upon such notice as the Court may require, for an order directing that an investigation be made of the LLC and any of its affiliated companies.

(2) If, upon an application under subsection (1), it appears to the Court that—

- (a) the business of the LLC or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the LLC or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose; or
- (c) persons concerned with the formation, business or affairs of the LLC or any of its affiliates have in connection therewith acted fraudulently or dishonestly;

the Court may make any order it thinks fit with respect to an investigation of the LLC and any of its affiliated companies by an inspector.

(3) If a member makes an application under subsection (1), he shall give the Registrar reasonable notice thereof, and the Registrar is entitled to appear and be heard.

#### Contents of order

**84.** (1) An order under section 83(2) shall include an order to investigate and an order appointing an inspector, who may be the Registrar, and fixing his remuneration and may include—

- (a) an order replacing an inspector;
- (b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (c) an order authorising an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records found on the premises;
- (d) an order requiring any person to produce documents or records to the inspector;



- (e) an order authorising an inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and establishing rules for the conduct of the hearing;
- (f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath or affirmation;
- (g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
- (h) an order requiring an inspector to make an interim or final report to the Court;
- (i) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and
- (j) an order requiring an inspector to discontinue an investigation.

(2) An inspector shall file with the Registrar a copy of every report made by the inspector under this section.

(3) A report received by the Registrar under subsection (2) must not be disclosed to any person other than in accordance with an order of the Court made under paragraph (1)(i).

### **Inspector's powers**

**85.** An inspector under this Part—

- (a) has the powers set out in the order appointing him; and
- (b) shall upon request produce to an interested person a copy of the order.

### **Hearing *in camera***

**86.** (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, must be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear and be heard at the hearing.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

### **Incriminating evidence**

**87.** No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in respect of the evidence.

**Privilege absolute**

**88.** An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

PART 13  
MISCELLANEOUS

**Service of process**

**89.** (1) Any summons, notice, order, document, process, information or written statement to be served on an LLC may be served by leaving it, or by sending it by registered mail addressed to the LLC, at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the LLC.

(2) Service of any summons, notice, order, document, process, information or written statement to be served on an LLC may be proved by showing that the summons, notice, order, document, process, information or written statement—

- (a) was mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and
- (b) was correctly addressed and the postage was prepaid.

**Regulations**

**90.** The Governor may make such regulations as are required for the better administration of this Act, and, in particular, the Governor may make regulations—

- (a) prescribing any matter required or authorised by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act or the payment of a penalty in respect of the late filing of any document, and prescribing the amount thereof;
- (c) prescribing the contents of returns, notices or other documents required to be filed with the Registrar or to be issued by him;
- (d) prescribing the rules with respect to exemptions permitted by this Act;
- (e) respecting the names of companies or classes thereof;
- (f) prescribing that specified companies be exempt from certain provisions of this Act;
- (g) respecting any other matter required for the efficient administration of this Act; and
- (h) respecting the conduct, duties and responsibilities of registered agents.

**Construction and application**

**91.** To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating to an LLC or to another member or manager—

- (a) any such member or manager acting under an LLC agreement is not liable to the LLC or to any such other member or manager for the member's or manager's reliance in good faith on the provisions of the LLC agreement; and
- (b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in an LLC agreement.

**Recovery of penalties**

**92.** Any licence fee or penalty payable under this Act or the regulations that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney General before a Magistrate in civil proceedings as a debt due to the Crown, notwithstanding the amount sought to be recovered.

**LLC dissolved by Registrar liable for fees and penalties**

**93.** (1) An LLC formed under this Act continues to be liable for all fees and penalties payable under this Act notwithstanding that the LLC has been dissolved by the Registrar under section 60 and those fees and penalties have priority over all other claims against the assets of the company.

(2) The Registrar may refuse to take action required of him under this Act for which a fee is prescribed until all fees have been paid.

**Consolidated Fund**

**94.** All fees and penalties paid under this Act shall be paid into the Consolidated Fund.

**Reports**

**95.** (1) A person who makes or assists in making a report, return, notice or other document—

- (a) that is required by this Act or the regulations to be filed with the Registrar or to be sent to any other person; and
- (b) that—
  - (i) contains an untrue statement of a material fact, or
  - (ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made;

commits an offence.

(2) A person does not commit an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

**Punishment of offences**

**96.** (1) A person who commits an offence set out in Column 1 of the Schedule is liable on summary conviction—

- (a) if an individual, to the penalty set out opposite the offence in Column 4 of the Schedule; or
- (b) if not an individual, to the penalty set out opposite the offence in Column 3 of the Schedule;

and, in either case, to the daily default fine (if any) set out opposite the offence in Column 5 of the Schedule for each day during which the default continues.

(2) Where an offence set out in Column 1 of the Schedule is committed by a body corporate, a director, manager, officer or, in the case of an LLC managed by its members, a member of the LLC who authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction—

- (a) if an individual, to the penalty set out opposite the offence in Column 4 of the Schedule; or
- (b) if not an individual, to the penalty set out opposite the offence in Column 3 of the Schedule;

and, in either case, to the daily default fine (if any) set out opposite the offence in Column 5 of the Schedule for each day during which the default continues.

(3) Notwithstanding that the offence is punishable only on summary conviction, the Proceeds of Crime Act applies to an offence that is set out in Column 1 of the Schedule and is indicated in that Column by an asterisk.

*(Am. in L.R. 15/12/2010)*

**General offences**

**97.** Every person who is guilty of an offence under this Act or the regulations is, if no punishment is provided for that offence elsewhere in this Act, liable on summary conviction to a fine of \$10,000.

**Order to comply**

**98.** When a person is convicted of an offence under this Act or the regulations, the Magistrate's Court may in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

**Limitation**

**99.** A prosecution for an offence under this Act or the regulations may be instituted at any time within 2 years from the time when the subject-matter of the prosecution arose.

**Civil remedies unaffected**

**100.** No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Act.

**Citation**

**101.** This Act may be cited as the Limited Liability Company Act, Revised Statutes of Anguilla, Chapter L65.

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**SCHEDULE**

(Section 96)

**OFFENCES AND PENALTIES**

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Section of Act creating offence	General nature of offence	Penalty (corporate body)	Penalty (individual)	Daily default fine
4(4)	LLC using a name that has been changed by the Registrar	\$25,000	\$25,000, imprisonment for 6 months or both	\$50
5(7)	LLC failing to change registered office	\$10,000	\$10,000	\$50
6(7)	LLC failing to change registered agent	\$10,000	\$10,000	\$50
7(7)	Registered agent failing to file copy of notice of intention to cease to act with Registrar	\$10,000	\$10,000	\$50
8(5)*	LLC carrying on prohibited business or activity	\$25,000	\$25,000, imprisonment for 6 months or both	
47(4)*	LLC making a distribution resulting in its liabilities exceeding the fair value of its assets	\$25,000	\$25,000, imprisonment for 6 months or both	
56(2)	Person failing to give Registrar notice of matters specified in section 56(1)	\$5,000	\$5,000	\$50
95(1)	Person making an untrue or misleading report, return, etc.	\$25,000	\$25,000, imprisonment for one year or both	

