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## AN ACT TO MAKE PROVISION FOR LIMITED LIABILITY PARTNERSHIPS.

*Preliminary***Title and commencement.**

1.(1) This Act may be cited as the Limited Liability Partnerships Act 2009.

(2) This Act shall come into operation on such day as may be appointed by the Government by notice in the Gazette and different days may be so appointed for different provisions.

**Interpretation.**

2. In this Act, except where the context otherwise requires—

“address”, in relation to a member of a limited liability partnership, means—

- (a) if an individual, his usual residential address, and
- (b) if a body corporate, its usual registered or principal office;

“business” includes every trade, profession and occupation;

“designated member” shall be construed in accordance with section 10;

“enactment” includes subsidiary legislation;

“incorporation document” shall be construed in accordance with section 4;

“limited liability partnership” has the meaning given by section 3(2);

“member” shall be construed in accordance with section 6;

“the Minister” means the Minister with responsibility for Finance;

“modifications” includes additions, omissions and substitutions;

“name”, in relation to a member of a limited liability partnership, means—

- (a) if an individual, his forename and surname (or, in the case of a peer or other person usually known by a title, his title instead of or in addition to either or both his forename and surname), and
- (b) if a body corporate, its corporate name;

“the Registrar” has the same meaning as in the Companies Act 2014; and

“regulations” means regulations made by the Minister by notice in the Gazette.

## *Establishment of limited liability partnerships*

### **Limited liability partnerships.**

3.(1) There shall be a new form of legal entity to be known as a limited liability partnership.

(2) A limited liability partnership is a body corporate (with legal personality separate from that of its members) which is formed by being incorporated under this Act; and—

- (a) in the following provisions of this Act, and
- (b) in any other enactment (except where provision is made to the contrary or the context otherwise requires),

references to a limited liability partnership are to such a body corporate.

(3) A limited liability partnership shall have unlimited capacity.

(4) The members of a limited liability partnership shall have such liability to contribute to its assets in the event of its being wound up as is provided for by virtue of this Act.

(5) Except so far as is otherwise provided by this Act or any other enactment, the law relating to partnerships does not apply to a limited liability partnership.

(6) The number of members who may form part of a limited liability partnership shall not be limited.

(7) The Schedule (which makes provision about the names and registered offices of limited liability partnerships) shall have effect.

### **Incorporation document etc.**

4.(1) For a limited liability partnership to be incorporated—

- (a) two or more persons associated for carrying on a lawful business with a view to profit must have subscribed their names to an incorporation document;

- (b) there must have been delivered to the Registrar either the incorporation document or a copy authenticated in a manner approved by him; and
- (c) there must have been so delivered a statement in a form approved by the Registrar, made by either a barrister or solicitor engaged in the formation of the limited liability partnership or anyone who subscribed his name to the incorporation document, that the requirement imposed by paragraph (a) has been complied with.

(2) The incorporation document must—

- (a) be in a form approved by the Registrar (or as near to such a form as circumstances allow);
- (b) state the name of the limited liability partnership;
- (c) state the address in Gibraltar which is to be the registered office of the limited liability partnership;
- (d) state the name and address of each of the persons who are to be members of the limited liability partnership on incorporation; and
- (e) either specify which of those persons are to be designated members or state that every person who from time to time is a member of the limited liability partnership is a designated member.

(3) If a person makes a false statement under subsection (1)(c) which he—

- (a) knows to be false, or
- (b) does not believe to be true,

he shall be guilty of an offence.

(4) A person guilty of an offence under subsection (3) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or to both.

**Incorporation by registration.**

5.(1) When the requirements imposed by paragraphs (b) and (c) of subsection (1) of section 4 have been complied with, the Registrar shall retain the incorporation document or copy delivered to him and, unless the requirement imposed by paragraph (a) of that subsection has not been complied with, he shall—

- (a) register the incorporation document or copy; and
- (b) give a certificate that the limited liability partnership is incorporated by the name specified in the incorporation document.

(2) The Registrar may accept the statement delivered under paragraph (c) of subsection (1) of section 4 as sufficient evidence that the requirement imposed by paragraph (a) of that subsection has been complied with.

(3) The certificate shall either be signed by the Registrar or be authenticated by his official seal.

(4) The certificate shall be conclusive evidence that the requirements of section 4 are complied with and that the limited liability partnership is incorporated by the name specified in the incorporation document.

## *Membership*

### **Members.**

6.(1) On the incorporation of a limited liability partnership, its members are the persons who subscribed their names to the incorporation document (other than any who have died or been dissolved).

(2) Any other person may become a member of a limited liability partnership by and in accordance with an agreement with the existing members.

(3) A person may cease to be a member of a limited liability partnership (as well as by death or dissolution) in accordance with an agreement with the other members or, in the absence of agreement with the other members as to cessation of membership, by giving reasonable notice to the other members.

(4) A member of a limited liability partnership shall not be regarded for any purpose as employed by the limited liability partnership unless, if he and the other members were partners in a partnership, he would be regarded for that purpose as employed by the partnership.

### **Relationship of members etc.**

7.(1) Except so far as is otherwise provided by this Act or any other enactment, the mutual rights and duties of the members of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its members, shall be governed—

- (a) by agreement between the members, or between the limited liability partnership and its members; or
- (b) in the absence of agreement as to any matter, by any provision made in relation to that matter by regulations under section 14(c).

(2) An agreement made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership (to take effect at any time after its incorporation).

**Members as agents.**

8.(1) Subject to subsection (2), every member of a limited liability partnership is the agent of the limited liability partnership.

(2) A limited liability partnership is not bound by anything done by a member in dealing with a person if—

- (a) the member in fact has no authority to act for the limited liability partnership by doing that thing; and
- (b) the person knows that the member has no authority or does not know or believe him to be a member of the limited liability partnership.

(3) Where a person has ceased to be a member of a limited liability partnership, the former member is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a member of the limited liability partnership unless—

- (a) the person has notice that the former member has ceased to be a member of the limited liability partnership; or
- (b) notice that the former member has ceased to be a member of the limited liability partnership has been delivered to the Registrar.

(4) Where a member of a limited liability partnership is liable to any person (other than another member of the limited liability partnership) as a result of a wrongful act or omission of his in the course of the business of the limited liability partnership or with its authority, the limited liability partnership is liable to the same extent as the member.



(5) No member or any servant of a limited liability partnership shall be liable (other than to another member of the limited liability partnership) as a result of a wrongful act or omission of his in the course of the business of the limited partnership or with its authority unless the act or omission of that member or servant is definitively found to have been in bad faith or that member or servant has expressly assumed personal liability and the claimant has reasonably relied on that assumption of personal liability.

*Ex-members.*

9.(1) This section applies in the event that a member of a limited liability partnership has either ceased to be a member (including the case where he has died) or—

- (a) has become bankrupt or had his estate sequestrated or has been wound up;
- (b) has granted a trust deed for the benefit of his creditors; or
- (c) has assigned the whole or any part of his share in the limited liability partnership (absolutely or by way of charge or security).

(2) In such an event the former member or—

- (a) his personal representative;
- (b) his trustee in bankruptcy or liquidator;
- (c) his trustee under the trust deed for the benefit of his creditors;  
or
- (d) his assignee,

may not interfere in the management or administration of any business or affairs of the limited liability partnership.

(3) In such an event, nothing in subsection (2) shall be taken to affect any right to receive an amount from the limited liability partnership.

**Designated members.**

10.(1) If the incorporation document specifies who are to be designated members—

- (a) they are designated members on incorporation; and
- (b) any member may become a designated member by and in accordance with an agreement with the other members,

and a member may cease to be a designated member in accordance with an agreement with the other members.

(2) In any case where there would otherwise be no designated members, or only one, every member is a designated member.

(3) If the incorporation document states that every person who from time to time is a member of the limited liability partnership is a designated member, every member is a designated member.

(4) Subject to subsection (5), if a limited liability partnership at any time delivers to the Registrar—

- (a) notice that specified members are to be designated members; or
- (b) notice that every person who from time to time is a member of the limited liability partnership is a designated member,

then, once the notice is delivered, subsection (1) (apart from paragraph (a)) and subsection (2), or subsection (3), shall have effect as if that were stated in the incorporation document.

(5) A notice shall not be effective for the purposes of subsection (4) unless—

- (a) it is in a form approved by the Registrar; and
- (b) it is signed by a designated member of the limited liability partnership or authenticated in a manner approved by the Registrar.

(6) A person ceases to be a designated member if he ceases to be a member.

### **Registration of membership changes.**

11.(1) A limited liability partnership must ensure that—

- (a) where a person becomes or ceases to be a member or designated member, notice is delivered to the Registrar within fourteen days; and
- (b) where there is any change in the name or address of a member, notice is delivered to the Registrar within 28 days.

(2) Where all the members from time to time of a limited liability partnership are designated members, subsection (1)(a) does not require notice that a person has become or ceased to be a designated member as well as a member.

- (3) A notice delivered under subsection (1)–
- (a) shall be in a form approved by the registrar; and
  - (b) shall be signed by a designated member of the limited liability partnership or authenticated in a manner approved by the Registrar,

and, if it relates to a person becoming a member or designated member, the notice shall contain a statement that he consents to becoming a member or designated member and the statement shall be signed by him or authenticated in a manner approved by the Registrar.

(4) If a limited liability partnership fails to comply with subsection (1), the partnership and, subject to subsection (5), every designated member shall be guilty of an offence.

(5) It is a defence for a designated member charged with an offence under subsection (4) to prove that he took all reasonable steps for securing that subsection (1) was complied with.

(6) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## *Taxation*

### **Taxation of limited liability partnerships.**

12.(1) This section applies where a limited liability partnership carries on a business with a view to profit and any reference in this section to a limited liability partnership shall be construed accordingly.

(2) For the purposes of any taxation so that personal rates and not the corporate rate of taxation shall apply–

- (a) all the activities of the partnership shall be treated as carried on in partnership by its members (and not by the partnership as such);
- (b) anything done by, to or in relation to the partnership for the purposes of, or in connection with, any of its activities shall be treated as done by, to or in relation to the members as partners; and
- (c) the property of the partnership shall be treated as held by the members as partnership property.

References in this subsection to the activities of the limited liability partnership include anything that it does, whether or not in the course of carrying on a business with a view to profit.

(3) For the purposes of the Income Tax Act, except as otherwise provided—

- (a) references to a partnership include a limited liability partnership;
- (b) references to members of a partnership include members of a limited liability partnership;
- (c) references to a company do not include a limited liability partnership; and
- (d) references to members of a company do not include members of a limited liability partnership.

(4) This section continues to apply in relation to a limited liability partnership which has carried on, but no longer carries on any business with a view to profit—

- (a) if the cessation is only temporary; or
- (b) subject to subsection (5), during a period of winding up following a permanent cessation.

(5) Subsection (1) shall cease to apply in relation to a limited liability partnership—

- (a) on the making of an order by a court that such a period of winding up as is referred to in subsection (4)(b) is being unreasonably prolonged;
- (b) on the appointment of a liquidator or (if earlier) on the making of a winding-up order by the court; or
- (c) on the occurrence of any event under the law of a country or territory outside Gibraltar corresponding to an event specified in paragraph (b).

**Stamp duty.**

13.(1) Stamp duty shall not be chargeable on an instrument by which property is conveyed or transferred by a person to a limited liability partnership in connection with its incorporation within the period of one year beginning with the date of incorporation if the following two conditions are satisfied in order that the exemption of stamp duty shall only apply to the extent that there is no change of beneficial interest of property being transferred as between individuals who are partners at the relevant time and the limited liability partnership.

- (2) The first condition is that at the relevant time the person—
- (a) is a partner in a partnership comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else); or
  - (b) holds the property conveyed or transferred as nominee or bare trustee for one or more of the partners in such a partnership.
- (3) The second condition is that—
- (a) the proportions of the property conveyed or transferred to which the persons mentioned in subsection (2)(a) are entitled immediately after the conveyance or transfer are the same as those to which they were entitled at the relevant time; or
  - (b) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to any duty or tax.
- (4) For the purposes of subsection (2) a person holds property as bare trustee for a partner if the partner has the exclusive right (subject only to satisfying any outstanding charge, lien or other right of the trustee to resort to the property for payment of duty, taxes, costs or other outgoings) to direct how the property shall be dealt with.
- (5) In this section “the relevant time” means—
- (a) if the person who conveyed or transferred the property to the limited liability partnership acquired the property after its incorporation, immediately after he acquired the property; and
  - (b) in any other case, immediately before its incorporation.
- (6) An instrument in respect of which stamp duty is not chargeable by virtue of subsection (1) shall not be taken to be duly stamped unless—
- (a) it has, in accordance with section 12 of the Stamp Duties Act 2005, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped; or
  - (b) it is stamped with the duty to which it would be liable apart from that subsection.

## *Supplementary*

### **Application of laws relating to companies and partnerships etc.**

14. Regulations may make provision about limited liability partnerships by doing all or any of the following–

- (a) applying or incorporating, with such modifications as appear appropriate, any law relating to companies or other corporations which would not otherwise have effect in relation to them;
- (b) providing for any law relating to companies or other corporations which would otherwise have effect in relation to them not to apply to them or to apply to them with such modifications as appear appropriate; and
- (c) applying or incorporating, with such modifications as appear appropriate, any law relating to partnerships.

**Regulations.**

15. The Minister may make regulations for carrying the provisions of this Act into effect, and without prejudice to the generality of this power may make regulations to–

- (a) make provision for dealing with non compliance with any of the regulations, including the creation of criminal offences;
- (b) impose fees;
- (c) provide for the exercise of functions by persons prescribed by the regulations;
- (d) contain any appropriate consequential, incidental, supplementary or transitional provisions or savings; and
- (e) make different provision for different purposes.

## SCHEDULE

### NAMES AND REGISTERED OFFICES

#### Part I

##### *Names*

#### **Index of names.**

1. In section 27(8) of the Companies Act 2014 (index of names), after paragraph (d) there shall be inserted—

“(da) No partnership shall be registered under the Limited Liability Partnerships Act 2009 by a name which would not be permitted under the Business Names (Registration) Act if it were a company or otherwise.”.

#### **Name to indicate status.**

2. The name of a limited liability partnership must end with—

- (a) the expression “limited liability partnership”; or
- (b) the abbreviation “llp” or “LLP”.

#### **Registration of names.**

3.(1) A limited liability partnership shall not be registered by a name—

- (a) which includes, otherwise than at the end of the name, the expression “limited liability partnership” or either of the abbreviations “llp” and “LLP”;
- (b) which is the same as a name appearing in the index kept under section 27(8) of the Companies Act 2014;
- (c) the use of which by the limited liability partnership would in the opinion of the Minister constitute a criminal offence; or
- (d) which in the opinion of the Minister is offensive or undesirable in the public interest.

(2) Except with the approval of the Minister, a limited liability partnership shall not be registered by a name which—

- (a) in the opinion of the Minister would be likely to give the impression that it is connected in any way with the Government of Gibraltar; or

- (b) includes any word or expression for the time being specified in regulations under section 27(5) of the Companies Act 2014 (names needing approval).

**Change of name.**

4.(1) A limited liability partnership may change its name at any time.

(2) Where a limited liability partnership has been registered by a name which—

- (a) is the same as or, in the opinion of the Minister, too like a name appearing at the time of registration in the index kept under section 27(8) of the Companies Act 2014; or
- (b) is the same as or, in the opinion of Minister, too like a name which should have appeared in the index at that time,

the Minister may within twelve months of that time in writing direct the limited liability partnership to change its name within such period as he may specify.

(3) If it appears to the Minister—

- (a) that misleading information has been given for the purpose of the registration of a limited liability partnership by a particular name; or
- (b) that undertakings or assurances have been given for that purpose and have not been fulfilled,

he may, within five years of the date of its registration by that name, in writing direct the limited liability partnership to change its name within such period as he may specify.

(4) If in the opinion of the Minister the name by which a limited liability partnership is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may in writing direct the limited liability partnership to change its name within such period as he may specify.

(5) Where a direction is given under subparagraph (4), the limited liability partnership may, within three weeks from the date of the direction apply to the Supreme Court to set it aside and the court may set the direction aside or confirm it and, if it confirms it, shall specify the period within which it must be complied with.

(6) Where a direction has been given under subparagraph (2), (3) or (4) specifying a period within which a limited liability partnership is to change



its name, the Minister may at any time before that period ends extend it by a further direction in writing.

(7) If a limited liability partnership fails to comply with a direction under this paragraph—

- (a) the limited liability partnership; and
- (b) any designated member in default,

shall be guilty of an offence.

(8) A person guilty of an offence under subparagraph (7) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **Notification of change of name.**

5.(1) Where a limited liability partnership changes its name it shall deliver notice of the change to the Registrar.

(2) A notice delivered under subparagraph (1)—

- (a) shall be in a form approved by the Registrar; and
- (b) shall be signed by a designated member of the limited liability partnership or authenticated in a manner approved by the Registrar.

(3) Where the Registrar receives a notice under subparagraph (2) he shall (unless the new name is one by which a limited liability partnership may not be registered)—

- (a) enter the new name in the index kept under section 27(8) of the Companies Act 2014; and
- (b) issue a certificate of the change of name.

(4) The change of name shall have effect from the date on which the certificate is issued.

## **Effect of change of name.**

6. A change of name by a limited liability partnership shall not—

- (a) affect any of its rights or duties,
- (b) render defective any legal proceedings by or against it,

and any legal proceedings that might have been commenced or continued against it by its former name may be commenced or continued against it by its new name.

**Improper use of “limited liability partnership” etc.**

7.(1) If any person carries on a business under a name or title which includes as the last words–

- (a) the expression “limited liability partnership”; or
- (b) any contraction or imitation of that expression,

that person, unless a limited liability partnership, shall be guilty of an offence.

(2) A person guilty of an offence under subparagraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Similarity of names.**

8. In determining for the purposes of this Part whether one name is the same as another there are to be disregarded–

- (a) the definite article as the first word of the name,
- (b) any of the following at the end of the name–

“limited liability partnership”,

“company”,

“and company”,

“company limited”,

“and company limited”,

“limited”,

“unlimited”, and

“public limited company”.

- (c) type and case of letters, accents, spaces between letters and punctuation marks, and “and” and “&” are to be taken to be the same.

**Part II**

*Registered Offices*

**Registered office.**

9. A limited liability partnership shall at all times have a registered office situated in Gibraltar to which communications and notices may be addressed.

**Change of registered office.**

10.(1) A limited liability partnership may change its registered office by delivering notice of the change to the Registrar.

(2) A notice delivered under subparagraph (1)–

- (a) shall be in a form approved by the Registrar, and
- (b) shall be signed by a designated member of the limited liability partnership or authenticated in a manner approved by the Registrar.