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## **LIMITED LIABILITY COMPANIES ACT 1996**

(Chapter 19)

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Received Royal Assent: 9 July 1996

Passed: 9 July 1996

**AN ACT**

**to provide for the establishment of limited liability companies; for the taxation of such companies; and for other purposes.**

**PART 1  
LIMITED LIABILITY COMPANIES  
CHAPTER I  
INTRODUCTION**

**1 Description of the features of limited liability companies**

(1) A limited liability company formed under this Act is a body of persons the principal

features of which are that-

(a) the company has legal personality and capacity for the exercise of its purposes and powers (section 2); and

(b) .....

**[Para (b) repealed by Limited Liability Companies and Financial Supervision (Amendment) Act 1999 s 1.]**

(c) the liability of its members is limited to the extent of their contribution to its capital (section 13); and

(d) restrictions are imposed on the transfer of members interests in the company (section 16); and

(e) the management of the company is vested in the members in proportion to their contribution to the capital of the company or as otherwise permitted by this Act (section 17); and

(f) the company must be wound up and dissolved on the happening of certain events such as the death or resignation of a member (section 27); and

(g) the profits of the company will be treated as the income of the members for the purposes of income tax (section 46).

(2) This section is for the purposes of explanation only and does not affect the operation of the following provisions of this Act.

## **2 Status, purposes and powers of limited liability companies**

(1) A limited liability company is a legal entity which is distinct from its members, manager and registered agent.

(2) A limited liability company which is organised under this Act may undertake any lawful activity, trade or business except-

(a) to (c) .....

**[Paras (a) to (c) repealed by Companies, etc. (Amendment) Act 2003 Sch 2.]**

(d) such business as may be prescribed.

**[Para (d) amended by Companies, etc. (Amendment) Act 2003 Sch 2.]**

(3) Nothing in this Act shall be interpreted as-

(a) precluding a person who carries on a business which requires licensing or authorisation under any statutory provision from forming a limited liability company; or

(b) precluding a limited liability company from holding any shares in, or debentures of a body corporate which carries on such a business,

if the applicable statutory provision does not prohibit it and the body licensing or authorising the occupation does not prohibit it in exercise of any power conferred under such provision.

(4) A limited liability company has the status and powers specified in Schedule 1.

## **3 Name of limited liability company**

(1) The words 'limited liability company', or its abbreviations 'LLC' or 'L.L.C.' shall be included at the end of the name of every limited liability company.

(2) The omission of the words 'limited liability company,' or the abbreviations 'LLC' or 'L.L.C.' in the use of the name of the limited liability company shall render any person who participates in the omission, or knowingly acquiesces in it, liable for any indebtedness, damage or liability occasioned by the omission.

(3) The Commission may-

(a) refuse to register a limited liability company by a name, or refuse to register a change of name of a limited liability company, which in its opinion is undesirable; or

(b) by direction attach conditions to the use of a name by a limited liability company registered or to be registered under this Act to ensure that it is not undesirable; or

(c) direct that a limited liability company change its name if in its opinion the name by which a limited liability company is registered is undesirable.

**[Subs (3) substituted by Companies, etc. (Amendment) Act 2003 Sch 1.]**

(4) For the purposes of this section-

(a) 'undesirable' means misleading, offensive or in any way likely to be harmful to the public;

(b) the Commission may publish guidance notes setting out the criteria which it will apply in determining whether a name is undesirable;

(c) the Commission may prescribe forms for use with this section.

**[Subs (4) substituted by Companies, etc. (Amendment) Act 2003 Sch 1.]**

(5) A direction given under subsection (3) (b) or (c) must, if not made the subject of an

application under subsection (7) be complied with within 6 weeks of that direction, at the expiry of which the Commission may, if the direction has not been complied with, change the name of the limited liability company upon the register to a name which is not undesirable and shall provide notice to the limited liability company of such change within 7 days of the date of the change upon the register.

[Subs (5) substituted by Companies, etc. (Amendment) Act 2003 Sch 1.]

(6) A copy of any direction given under subsection (3)(c) and any change of name effected by the Commission under subsection (5) shall be placed by the Commission upon the public file of the company maintained at the Companies Registry.

[Subs (6) substituted by Companies, etc. (Amendment) Act 2003 Sch 1.]

(7) Any person interested may within three weeks of a refusal to register a limited liability company under subsection (3)(a) or of being given a direction under subsection (3) (b) or (c), apply to the High Court for the refusal or direction to be set aside, and if the application to set aside a direction fails, the High Court may specify a period within which the direction shall be complied with, or may order that the Commission change the name of the limited liability company upon the register to a name which is not undesirable, on such terms and conditions as seem to the High Court just and expedient.

[Subs (7) substituted by Companies, etc. (Amendment) Act 2003 Sch 1.]

(8) to (10) .....

[Subss (8) to (10) repealed by Companies, etc. (Amendment) Act 2003 Sch 1.]

#### **4 Registered office**

(1) A limited liability company shall at all times maintain a registered office in the Island.

(2) If a limited liability company fails for 1 month to maintain a registered office in contravention of subsection (1)-

- (a) it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000; and
- (b) it shall be deemed to be defunct until a registered office is established and a statement in the prescribed form is delivered to the Commission.

[Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

#### **5 Registered agent**

(1) A limited liability company shall at all times maintain a registered agent in the Island who shall hold the prescribed qualifications.

(2) If a limited liability company fails for 1 month to maintain a registered agent in contravention of subsection (1)-

- (a) it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000; and
- (b) it shall be deemed to be defunct until a registered agent is appointed and a statement in the prescribed form is delivered to the Commission.

[Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

## **CHAPTER II REGISTRATION**

#### **6 Formation**

(1) Any person who is resident in the Island may apply to form a limited liability company which shall have 2 or more members by delivering to the Commission-

- (a) articles of organisation which comply with the requirements of this Act and which are signed by-
  - (i) the person forming the company; and
  - (ii) the first members named in the articles of organisation; and
- (b) a consent in the prescribed form signed by the person named in the articles as the registered agent; and
- (c) a statement in the prescribed form of the intended registered office in the Island.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by Corporate Service Providers Act 2000 Sch 3.]

(2) The person forming the company need not be a member of the limited liability company.

#### **7 Articles of organisation**

- (1) The articles of organisation shall specify-
- (a) the name of the limited liability company;
  - (b) .....

**[Para (b) repealed by Limited Liability Companies and Financial Supervision (Amendment) Act 1999 s 1.]**

- (c) the names and addresses of its members;
- (d) the name and address of its registered agent in the Island;
- (e) the matters referred to in Schedule 2.

(1A) Except where the articles of organisation fix a time for the dissolution of the limited liability company, the duration of the company shall not be limited to any fixed period of time.

**[Subs (1A) inserted by Limited Liability Companies and Financial Supervision (Amendment) Act 1999 s 1.]**

(2) It is not necessary to set out in the articles of organisation any of the powers specified in this Act.

(3) Subject to subsection (5), the articles of organisation shall be amended when-

- (a) there is a change in the name of the limited liability company; or
- (b) there is a change in the amount or the character of the contributions to capital;
- (c) there is any change in the membership of the limited liability company;
- (d) there is a false or erroneous statement in the articles of organisation;
- (e) there is a change in the time as stated in the articles of organisation for the dissolution of the limited liability company;
- (f) a time is fixed for the dissolution of the limited liability company if no time is specified in the articles of organisation; or
- (g) the members desire to make a change in any other statement in the articles of organisation in order that it shall accurately represent the agreement between them.

(4) Any amendment to the articles of organisation shall be adopted in accordance with the operating agreement or with the consent of all members.

(5) Where a limited liability company amends its articles of organisation its registered agent shall within 1 month of the making of the amendment deliver to the Commission notice, in the prescribed form, of the amendment and the Commission shall retain it with the registered copy of the articles of organisation of the company.

**[Subs (5) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(6) Where a limited liability company changes its name, the Commission shall on delivery of the documents referred to in subsection (5) issue a replacement certificate of organisation to meet the circumstances of the case.

**[Subs (6) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(7) A change of name shall have effect from the date on which a replacement certificate is issued.

(8) A change of name of a limited liability company shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

## **8 Registration of limited liability company**

(1) If the Commission is satisfied that the requirements of this Act in respect of the registration and of matters precedent and incidental to registration have been complied with, it shall retain and register the documents delivered under section 6.

**[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by Interpretation Act 1976 s 16A.]**

(2) On the registration of documents under subsection (1), the Commission shall certify that the limited liability company is organised and registered under this Act.

**[Subs (2) amended by Companies (Transfer of Functions) Act 2000 Schs 1 and 3.]**

(3) A certificate of organisation shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental to registration have been complied with and that a limited liability company has been organised and registered under this Act.

(4) A limited liability company shall not transact business nor incur indebtedness, except that which is incidental-

- (a) to its organisation and registration; or

(b) to obtaining subscriptions for or payment of contributions, until the certificate of organisation is issued.

## **9 Change etc of registered office or registered agent**

(1) If for any reason there is a change in the registered office or the registered agent of a limited liability company, the company shall deliver to the Commission within 1 month of the change a statement in the prescribed form.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(2) If a limited liability company fails to comply with subsection (1)-

- (a) it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000;
- (b) it shall be deemed to be defunct until the statement is delivered to the Commission .

[Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

## **10 Annual returns**

(1) Every limited liability company shall in each year deliver an annual return in the prescribed form to the Commission within one month of the anniversary of the company's registration under this Act.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by Companies, etc. (Amendment) Act 2003 Sch 1.]

(2) The annual return shall state-

- (a) the address of the registered office of the company;
- (b) the name and address of the registered agent of the company;
- (c) the name and address of the manager (if any) of the company, the date of his election and the period of his appointment;

[Para (c) amended by Companies, etc. (Amendment) Act 2003 Sch 1.]

- (d) the names and addresses of the members of the company,

or, where any of those particulars remain unchanged, it shall state that fact.

(3) If a limited liability company fails to comply with subsection (1)-

- (a) it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000;
- (b) it shall be deemed to be defunct until the annual return is delivered to the Commission.

[Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

## **11 Financial Supervision Commission may strike defunct limited liability company off register**

(1) Where the Commission has reasonable cause to believe that a limited liability company is not carrying on business or in operation, it may send a letter-

- (a) inquiring whether the company is carrying on business or in operation; and
- (b) stating that if no answer is received within 2 months from the date of the letter, a notice will be published with a view to striking the name of the company off the register.

(2) A letter sent under subsection (1) of this section shall be sent by recorded delivery.

(3) If the Commission either receives an answer to the effect that the limited liability company is not carrying on business or in operation, or does not within 2 months after sending the letter under subsection (1) of this section receive any answer, it will publish and send to the company by post, a notice that at the expiration of 2 months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a limited liability company is being wound up, the Commission has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the Commission shall publish and send to the company or the liquidator, if any, a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice the Commission may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice and on the publication the company shall be dissolved:

Provided that-

- (a) the liability of every manager, if any, and member shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the court to wind up a limited liability company the name of which has been struck off the register.

(6) If a limited liability company or any member or creditor feels aggrieved by the company having been struck off the register, the court on an application made by the company or member or creditor before the expiration of 12 years from the publication of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the Commission for registration together with such fee as may be prescribed under section 50 for the restoration of the company to the register, the company shall be deemed to have continued in existence as if its name had not been struck off, and the court may by order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a limited liability company may be addressed to the company at its registered office, or, if no office has been registered or the Commission has reasonable cause to believe that the registered office has been abandoned, to the care of the manager, the registered agent or any member whose name and address are known to the Commission, or may be sent to each of the persons who subscribed to the articles of organisation, addressed to him at the address mentioned in the articles of organisation.

(8) For the purposes of this section, a limited liability company which has failed to forward an annual return to the Commission within 6 months after the company's return date under section 10, shall be deemed not to be in operation until such return is forwarded to the Commission.

(9) Subsection (8) is without prejudice to section 10(3) of this Act.

(10) For the purposes of this section and section 11A, a notice shall be considered published-

- (a) by publishing a notice in one edition of a newspaper published and circulating in the Isle of Man; and
- (b) by publishing a notice on the Financial Supervision Commission website for a minimum period of one month; and
- (c) by the Commission maintaining a current list in the prescribed form and with the prescribed particulars of limited liability companies in respect of which notice has been published and by making such list available for inspection by any person.

[S 11 substituted by Companies, etc. (Amendment) Act 2003 s 17.]

### **11A Alternative procedure for dissolving solvent limited liability companies**

(1) Where a limited liability company has ceased to operate and has discharged all its debts and liabilities (other than contributions to capital owed to its members) the registered agent or any member of the company may apply to the Commission for a declaration of dissolution of the company.

(2) An application by a limited liability company under this section in the prescribed form for a declaration of dissolution shall be in writing and shall be accompanied by a statutory declaration made by a manager or a member of the limited liability company stating that the company has ceased to operate, that it has complied with its obligations under section 10 and that to the best of his knowledge and belief and having made full enquiry into the affairs of the limited liability company the manager or member is satisfied that-

- (a) the limited liability company has discharged all its debts and liabilities (other than contributions to capital owed to its members); and
- (b) the particulars contained within the last annual return of the limited liability company (or, in the case of a company for which an annual return has not fallen due, the particulars filed on first registration) remain accurate at the date of making the statutory declaration or that they are accurate as amended by the applicant at the date of making the statutory declaration.

- (3) Upon receipt of an application under subsection (1) the Commission shall-
- (a) publish a notice in the manner prescribed by section 11(10) to the effect that the applicant has applied to the Commission for a declaration of dissolution of the limited liability company and that, unless written objection is made to the Commission within one month of the date of publication of the notice the Commission may dissolve the

- company; and
- (b) within one month of the date of publication of the notice obtain written notice from the Assessor of Income Tax, the Collector of Customs and Excise and the Attorney General that they have no objection to the making of a declaration of dissolution in respect of the limited liability company.

(4) The court, on being satisfied that the period made available to the Assessor of Income Tax or the Collector of Customs and Excise or the Attorney General by the Commission for the making of objections under subsection (3)(b) requires to be extended, may upon application order that the period for objections shall be extended on such terms and conditions as it deems appropriate.

(5) Before making an application to the Commission under this section, the applicant shall ensure that there has been sent by pre-paid post to the registered agent and to the manager (if any) and each member of the limited liability company at the last address of which the limited liability company has notice, a notice to the effect that the applicant proposes to apply to the Commission for a declaration of dissolution of the limited liability company and that, unless written objection is made to the Commission within one month of the date the notice was posted, the Commission may dissolve the limited liability company.

(6) The Commission shall not make a declaration of dissolution of a limited liability company earlier than one month after the date of the publication of the notice required by subsection (3) of this section.

(7) On receipt of any written objection to the dissolution of the limited liability company, the Commission shall forthwith notify the applicant for the declaration of dissolution of the receipt of the objection and of the identity of the objector.

(8) Where any manager, member or creditor of a limited liability company has objected to the dissolution of the limited liability company the Commission shall not declare the dissolution thereof unless-

- (a) the manager, member or creditor, as the case may be, withdraws the objection; or
- (b) the Commission decides that the objection is completely without justification, and the objector has not appealed against the Commission's decision within the time specified in section 11D(1), or the court has upheld the Commission's decision.

(9) If the Commission is not prevented from declaring the dissolution of a limited liability company pursuant to this section and agrees to the dissolution, it shall notify the limited liability company that, subject to the company's articles of organisation, operating agreement or other document evidencing agreement between the members, it is entitled to distribute its surplus assets among its members according to their respective rights and, notwithstanding any other provision of this Act or any rule of law, the limited liability company may distribute its surplus assets accordingly.

(10) Subject to subsection (11) of this section, on receipt of notification from a limited liability company that its surplus assets have been distributed in accordance with subsection (9) of this section, the Commission may, by notice in one newspaper published and circulating in the Isle of Man, declare that the limited liability company is dissolved and, on the publication of the notice, the limited liability company shall be dissolved.

- (11) Notwithstanding the dissolution of the limited liability company-
- (a) the liability, if any, of every manager and member of the company shall continue and may be enforced as if the limited liability company had not been dissolved; and
- (b) notwithstanding that a limited liability company has been dissolved, or that its surplus assets have been distributed in accordance with this section, the court may wind up the limited liability company as if it had not been dissolved, or its surplus assets had not been distributed, as the case may be.

(12) Where a limited liability company has been dissolved pursuant to this section, the court, on an application made by the Commission or the manager (if any), a member or creditor of the limited liability company before the expiration of 12 years from the publication of the notice of dissolution, may, if satisfied that at the time of dissolution of the limited liability company it was in operation or had not discharged all its debts and liabilities or otherwise that it is just that the dissolution of the limited liability company be revoked, order that the dissolution of the limited liability company be revoked, and upon a sealed copy of the order being delivered to the Commission for registration, the limited liability company shall be deemed to have continued in existence as if it had not been dissolved; and the court may by the order give such

directions and make such provisions as seem just for placing the limited liability company and all other persons in the same position as nearly as may be as if the limited liability company had not been dissolved.

(13) An order under subsection (12) may be made on such terms and conditions as the court thinks fit.

[S 11A inserted by Companies, etc. (Amendment) Act 2003 s 18.]

## **11B Restoration of dissolved limited liability companies to the register**

(1) A limited liability company or any manager, member or creditor thereof who feels aggrieved by a company having been either-

- (a) struck off the register under section 11 of this Act; or
- (b) dissolved under section 11A of this Act,

may, before the expiration of 12 years from the publication of a notice under section 11(5) or section 11A(10), make application to the Commission for a direction under this section.

(2) Upon receipt of an application under subsection (1) the Commission shall, within a reasonable time, publish notice of the application on the Financial Supervision Commission website and shall maintain a current list of applications.

(3) An application under subsection (1) shall be in the prescribed form and shall be accompanied by-

- (a) a copy of the notice given under subsection (4) of this section; and
- (b) written notice from the Attorney General, the Assessor of Income Tax and the Collector of Customs and Excise stating that they have no objection to the restoration of the limited liability company to the register.

(4) Before making an application to the Commission under subsection (1) of this section, the applicant shall ensure that there has been-

- (a) published in one newspaper published and circulating in the Isle of Man; and
- (b) sent by post to each member of the limited liability company at the last address of which the limited liability company has notice,

a notice to the effect that the applicant proposes to apply to the Commission for a direction restoring the limited liability company to the register and that unless written objection is made to the Commission within one month of the date of publishing or posting, as the case may be, the Commission may make such direction.

(5) The Commission shall not make a direction under this section earlier than one month after the date of publication or posting, as the case may be, of the last notice published or posted for the purposes of subsection (4) of this section.

(6) On receipt of any written objection to the restoration of the limited liability company, the Commission shall forthwith notify the applicant of the receipt of the objection and of the identity of the objector.

(7) The Commission shall not make a direction under this section unless-

- (a) there are no objections to the restoration of the limited liability company under this section; or
- (b) all objections are withdrawn; or
- (c) the Commission decides that the objections are without justification and the objector has not appealed against the Commission's decision within the time specified in section 11D of this Act or the court has upheld the Commission's decision.

(8) On receipt of an application under this section the Commission, if satisfied that there are good grounds for restoration of the limited liability company to the register, may direct the name of the company to be restored to the register.

(9) A direction given under this section may be made subject to conditions and the Commission may include such further directions and such provisions as seem just for placing the limited liability company and all other persons in the same position as nearly as maybe as if the company had not been dissolved and without prejudice to the generality of the foregoing any fees and duties due to the Commission shall be due and payable at the rates prevailing at the date of such restoration.

(10) When the applicant delivers a certified copy of the direction for registration the limited liability company shall be deemed to have continued in existence as if it had not been dissolved.

(11) This section is without prejudice to the powers of the court under section 11(6) or section 11A(12).

### **11C Power of Commission to refuse to register or receive documents**

(1) Subject to section 11D, a document shall be deemed not to have been submitted under this Act to the Commission (whether by delivery, filing, production, forwarding, lodging, electronic filing or otherwise) until the time when it is accepted for registration or otherwise received by the Commission.

(2) The Commission may prescribe regulations for the electronic filing of any document required to be filed under this Act.

(3) If in the opinion of the Commission any document submitted to it under this Act-

- (a) contains any matter contrary to law; or
- (b) does not comply with this Act; or
- (c) has not been duly completed; or
- (d) contains any misdescription or error, or any matter that is not clearly legible; or
- (e) is not furnished in such manner and conforming to such requirements as the Commission may reasonably require for the purpose of enabling the processing and copying of the document; or
- (f) is not accompanied by the correct fee or duty; or
- (g) is not in the prescribed format;

it may refuse to accept for registration or otherwise receive the document, and may request either that the document be appropriately amended or completed and submitted to it again or that a fresh document be submitted in its place or that the document be submitted again with the correct fee or duty.

(4) The Commission may require any person who submits a document to it under this Act to produce to it such other document or to give to it such information as it considers necessary in order to form an opinion whether it may refuse under subsection (3) of this section to accept for registration or to otherwise receive the document.

### **11D Appeals from decisions of Commission**

(1) Any person who is aggrieved by the refusal of the Commission to register a limited liability company, or to register or receive any document submitted to it under this Act, or who is aggrieved by any other act or decision of the Commission under this Act, may appeal to a court of summary jurisdiction within 21 days after the date of the refusal or other act or decision, or within such further time as the court may allow.

(2) On hearing the appeal, the court may confirm the refusal or other act or decision of the Commission, or give such directions or make such determination in the matter as the court thinks fit.

(3) No right of appeal shall lie under this section against any act or decision of the Commission-

- (a) in respect of which there is any express provision in this Act in the nature of an appeal or review; or
- (b) that is declared by this Act to be conclusive or final, or that is embodied in any document declared by this Act to be conclusive evidence of any act, decision, matter, or thing.

(4) Subject to subsection (5), notwithstanding any other provision of any enactment or any rule of law, where a person appeals or applies to the court in respect of an act or decision of the Commission under section 11C until a decision on the appeal or application is given, the Commission, and any person authorised by it under that section for the purpose, may continue to exercise its powers under that section as if no such appeal or application had been made, and no person shall be excused from fulfilling his obligations under that section by reason of that appeal or application.

(5) To the extent that an appeal or application in respect of any such act or decision is allowed or granted, as the case may be-

- (a) the Commission shall ensure that, forthwith after the decision on the appeal or application is given, all records made by it, or by a person authorised by it for that purpose, under section 11C in respect of that act or decision are destroyed or expunged; and
- (b) no information acquired under section 11C of this Act in respect of that act or decision shall be admissible in any proceedings.

### CHAPTER III

#### CAPITAL: CONTRIBUTIONS, WITHDRAWAL, REDUCTION, ETC.

##### 12 Contributions to capital

The contributions to capital of a member to a limited liability company may be in cash, property or services rendered, or by means of a promissory note or any form of binding obligation to contribute cash or property or to perform services.

##### 13 Liability of members of limited liability companies

(1) The liability of a member is limited to-

- (a) the difference between his contributions to capital as actually made and that stated in the articles of organisation, operating agreement, subscription for contribution or other document executed by the member as having been made by the member; and
- (b) any unpaid contribution to capital which he agreed in the articles of organisation, operating agreement or other document executed by the member to make in the future at the time and on the conditions stated in the articles of organisation, operating agreement or other document evidencing such agreement.

(2) Subject to subsection (3), the liabilities of a member specified in subsection (1) can be waived or compromised with the consent of all members.

(3) A waiver or compromise under subsection (2) shall not affect the rights of any creditor of, or any other person having a claim against, the limited liability company.

(4) When the whole or part of the capital of a contributor has been returned to him, he shall for a period of 6 years after the return continue to be liable to the limited liability company for any sum (not exceeding the amount returned) necessary to discharge its relevant liabilities.

(5) For the purposes of subsection (4), the relevant liabilities are the liabilities to all creditors of, and other persons having claims against, the limited liability company, in respect of-

- (a) any credit extended during the period that the returned capital contribution was held by the limited liability company; or
- (b) any claims which arose before the return.

##### 14 Withdrawal or reduction of members' contributions to capital

(1) A member shall not receive out of the property of a limited liability company any part of his contribution to capital unless-

- (a) all liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or there remains property of the limited liability company sufficient to pay them;
- (b) the consent of all members is had, unless the return of the contribution to capital may be rightfully demanded as provided in this Act; and

**[Para (b) amended by Limited Liability Companies and Financial Supervision (Amendment) Act 1999 s 1.]**

- (c) the articles of organisation permit the withdrawal or reduction.

(2) Subject to the provisions of subsection (1), a member may demand the return of his contribution-

- (a) on the dissolution of the limited liability company; or
- (b) unless otherwise prohibited or restricted in the operating agreement, after the member has given all other members of the limited liability company prior notice in writing in conformity with the operating agreement.

(3) If the operating agreement does not prohibit or restrict the right to demand the return of capital and no notice period is specified, a member making the demand must give 6 months prior notice in writing.

(4) In the absence of a statement in the articles of organisation to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution to capital.

(5) A member of a limited liability company may have the limited liability company dissolved and its affairs wound up when-

- (a) the member rightfully but unsuccessfully has demanded the return of his contribution; or
- (b) the other liabilities of the limited liability company have not been paid, or the property

of the limited liability company is insufficient for their payment and the member would otherwise be entitled to the return of his contribution.

### **15 Division of profits; impairment of capital**

(1) Subject to subsection (2), a limited liability company may, from time to time, divide and allocate the profits and losses of its business among the members and among classes of the members of the company in accordance with the operating agreement.

(2) No distribution shall be made if, after such distribution, the assets of the limited liability company would not be in excess of all liabilities of the limited liability company except liabilities to members on account of their contributions.

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

(4) Subject to subsection (5), distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members in the manner provided in the operating agreement.

(5) If the operating agreement does not so provide, distributions shall be made on the basis of the value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

(6) The provisions of this section relating to the allocation of losses shall not affect the limitation on liability of members under section 13.

### **16 Members' interest and transferability**

(1) The interest of all members in a limited liability company constitutes the personal estate of the member, and may be transferred or assigned as provided in the operating agreement.

(2) If all the members of a limited liability company other than the member proposing to dispose of his interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right-

- (a) to become a member of the limited liability company; or
- (b) to participate in the management of the business and affairs of the limited liability company.

(3) Such a transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions, to which the original member would otherwise have been entitled.

## **CHAPTER IV MANAGEMENT**

### **17 Management**

(1) Subject to the following provisions of this section, a limited liability company shall be managed by its members.

(2) The rights of the members to manage a limited liability company shall be in proportion to their contribution to the capital of the company, as adjusted from time to time to reflect any additional contributions or withdrawals by the members.

(3) If provision is made for it in the articles of organisation, management of the limited liability company may be vested in a manager who shall-

- (a) be elected by the members in a manner provided for in the operating agreement; and
- (b) hold office for such period as the members shall determine,

unless the operating agreement expressly provides otherwise.

(4) The manager and any person appointed by him, shall have any such right or duty as is-

- (a) specified in the operating agreement; and
- (b) expressly confirmed by the members.

### **18 Contracting debts**

Except as otherwise provided in this Act, no debt shall be contracted or liability incurred by or on behalf of a limited liability company, except by-

- (a) any member if management of the limited liability company is retained by the members; or
- (b) its manager if management of the limited liability company has been conferred on a manager.

## **19 Accounting records**

(1) Every limited liability company shall cause accounting records to be kept in accordance with the provisions of this section.

(2) The accounting records shall be sufficient to show and explain the company's transactions.

(3) The accounting records shall be such as to disclose, within a reasonable time and with reasonable accuracy, the financial position of the company at any time.

(4) The accounting records shall in particular contain-

- (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of the assets and liabilities of the company; and
- (c) where the company's business involves dealing in goods-
  - (i) statements of stock held by the company at the end of each financial year of the company;
  - (ii) all statements of stocktakings from which any such statement as is mentioned in sub-paragraph (i) has been or is to be prepared; and
  - (iii) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased showing the goods and the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

(5) Subject to subsection (6), the accounting records shall be kept at the registered office of the company or at such other place as the members of the company think fit and shall at all times be open to inspection by the members of the company.

(6) If accounting records are kept at a place outside the Island by a company, accounts and returns with respect to the business dealt with in the accounting records so kept shall be sent to, and kept at a place in the Island and shall at all times be open to inspection by the members of the company.

(7) The accounts and returns to be sent to the Island in accordance with subsection (6) shall be such as to disclose with reasonable accuracy the financial position of the business in question at intervals not exceeding 6 months.

(8) Subject to any direction with respect to the disposal of any records kept by a company given under any regulations under section 28, any accounting records which a company is required by this section to keep shall be preserved by it for 6 years from the date on which they are made.

(9) If a company fails to comply with any provision of subsections (1) to (6), every member and manager (if any) of the company shall be guilty of an offence.

(10) A person shall not be guilty of an offence under subsection (9) if he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the default was excusable.

(11) If any member or manager of a company fails to take all reasonable steps for securing compliance by the company with subsection (8) or has intentionally caused any default by the company thereunder he shall be guilty of an offence.

(12) Any person guilty of an offence under this section shall be liable-

- (a) on conviction on information to custody for a term not exceeding 2 years, or to a fine, or to both;
- (b) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both.

## **20 Registration of charges**

Schedule 3, which provides for the registration of charges, shall have effect.

## **21 Execution of instruments**

Instruments and documents providing for the acquisition, mortgage or disposition of property of a limited liability company shall be valid and binding upon the limited liability company if executed by-

- (a) any member if management of the limited liability company is retained by the members; or
- (b) its manager if management of the limited liability company has been conferred on a manager.

## **22 Unauthorised assumption of powers**

All persons who assume to act as a limited liability company without authority to do so shall be jointly and severally liable for all debts and liabilities.

## **23 Waiver of notice**

When, under this Act or under the articles of organisation or operating agreement of a limited liability company, notice is required to be given to a member or to a manager of a limited liability company having a manager or managers, a waiver in writing signed by the person or persons entitled to the notice, whether before or after the time stated in it, is equivalent to the giving of notice.

# **CHAPTER V PROCEEDINGS AND INSPECTION**

## **24 Parties to actions**

A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member's right against or liability to the limited liability company.

## **25 Service of process**

(1) Any process, notice or demand required or permitted to be served upon a limited liability company may be served on the company at its registered office.

(2) Where this subsection applies to a limited liability company, any document may be served on it by sending a copy of the document by post to each person who, on the date on which the document is sent, is shown as a member of the company in the documents kept by the Commission.

[Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(3) Subsection (2) applies to a limited liability company where the person having control of the premises at which the company purports to have its registered office has delivered to the Commission a notice in the prescribed form stating that the company does not have authority to maintain its registered office at the premises.

[Subs (3) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(4) This section shall not limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

## **26 Inspection of affairs of companies**

(1) The High Court may on the application of the Commission or a member of a limited liability company appoint one or more competent inspectors to investigate the affairs of the company and to report as the court directs.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(2) It shall be the duty of all members, managers and registered agents of the limited liability company, and of other persons who, in the opinion of the inspectors, have or may be in possession of, any book, document or other records of or relating to the company-

- (a) to produce to the inspector all such books and documents which are in their custody or power;
- (b) to attend before the inspectors when required to do so; and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

(3) The inspectors may examine on oath the persons mentioned in subsection (2) in relation to the affairs of the company and may administer an oath accordingly.

(4) If any person mentioned in subsection (2) refuses-

- (a) to produce to the inspectors any book or document which it is his duty under this section so to produce; or
- (b) to answer any question which is put to him by the inspectors with respect to the affairs of the company,

the inspectors may certify the refusal under their hand to the High Court, and the court may thereupon enquire into the case, and after hearing the evidence of the inspectors and any evidence which may be offered in defence, may punish the offender in the like manner as if he had been in contempt of the court.

(5) On the conclusion of the investigation the inspectors shall report their opinion to the court, and a copy of the report shall be forwarded by the court to the Commission, the registered

office of the company, its registered agent and manager (if any).

[Subs (5) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(6) If at any stage during the course of an inspection under this section it appears to the High Court that any person may have been guilty of an offence in relation to the company, it may refer the matter to the Attorney General.

(7) The expenses of and incidental to an inspection under this section shall be paid by the applicant or by the company or in part by the applicant and in part by the company according to the direction of the court.

(8) Any balance of the expenses not defrayed either by the company or the applicant shall be defrayed by the Commission.

[Subs (8) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(9) The power of the High Court under this section shall be exercisable in respect of a limited liability company notwithstanding that it is in the course of winding up.

## PART 2

### DISSOLUTION OF LIMITED LIABILITY COMPANIES

#### 27 Circumstances in which limited liability companies are to be wound up

(1) **(CAB 2009)** The affairs of a limited liability company organised under this Act shall be wound up on the occurrence of any of the following events-

(a) when the period (if any) fixed by the articles of organisation for the duration of the limited liability company expires; or

[Para (a) amended by Limited Liability Companies and Financial Supervision (Amendment) Act 1999 s 1.]

(b) by the unanimous written agreement of all members; or

(c) subject to subsection (2) and to section 28(2) **(CAB 2009)**, on the death, retirement, resignation, expulsion, dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited liability company; or

(d) where the High Court makes an order under section 32; or

(e) in any other case for which this Act provides,

but its separate existence shall continue until a certificate of dissolution has been issued by the Commission or until an order dissolving the limited liability company has been made by the High Court.

(2) The affairs of a limited liability company are only to be wound up on the occurrence of an event specified in subsection (1)(c) if the operating agreement of the company so provides. **(CAB 2009)**

[S 27 amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

#### 28 Winding up procedure

(1) On the occurrence of any of the events specified in section 27(1)(a) to (c) and (e) **(CAB 2009)** the remaining members of a limited liability company-

(a) shall be deemed to be joint provisional liquidators of the company for the purpose of winding up the affairs of the company; and

(b) shall forthwith deliver to the Commission a notice in the prescribed form of provisional intent to wind up the company, and

[Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

the company shall cease to carry on its business, except insofar as may be necessary for the intended winding up of its business.

(2) If, within 60 days of the occurrence of any of the events specified in section 27(1)(c) **(CAB 2009)**, there is delivered to the Commission a notice in the prescribed form that all the remaining members-

(a) have agreed to continue the business of the company **(CAB 2009)**; and

(b) have entered into a legally binding agreement with the former member, his agent or personal representatives for the purchase of his interest in the company,

the obligation to wind up the company shall cease to have effect and the company may continue to carry on its business.

[Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(3) Except where a notice has been delivered under subsection (2), on the expiry of 60 days following the occurrence of any of the events specified in section 27(1)(a) to (c) and (e) **(CAB 2009)** the provisional liquidators-

(a) shall be obliged to proceed to wind up the affairs of the company; and

(b) shall publish a notice in the prescribed form in 2 newspapers published and circulating in the Island.

(4) The provisional liquidators may at any time by unanimous written agreement appoint a person to act as liquidator in their place and shall, upon making such an appointment, forthwith deliver a notice of appointment in the prescribed form to the Commission.

**[Subs (4) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(5) Where a liquidator appointed under subsection (4) ceases to act as such, the persons who were the provisional liquidators who appointed the liquidator shall resume office as provisional liquidators and-

- (a) shall be obliged to continue the winding up of the affairs of the company;
- (b) shall forthwith deliver a notice of cessation in the prescribed form to the Commission; and

**[Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(c) may exercise the power conferred by subsection (4) to replace the former liquidator.

(6) The Treasury may by regulations provide for the practice and procedure to be adopted by provisional liquidators and liquidators in the winding up of limited liability companies.

(7) A provisional liquidator or liquidator who fails to comply with regulations under subsection (6) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,500.

(8) If on the expiry of the period of 12 months immediately following the delivery of a notice under subsection (1)(b)-

- (a) no notice has been delivered under subsection (2); and
- (b) no notice has been delivered under subsection (4); and
- (c) no liquidator has been appointed by the High Court under section 32; and
- (d) no notice of dissolution has been delivered under section 30; and
- (e) the Commission is satisfied that the provisional liquidators are not fulfilling their obligations under subsection (3),

**[Para (e) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

the company shall be deemed to be defunct until a liquidator is appointed under subsection (4) or by the High Court under section 32.

(9) If on the expiry of the period of 12 months immediately following the delivery of a notice under subsection (4)-

- (a) the Commission is satisfied that the liquidator has ceased to act as such; and
- [Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**
- (b) no replacement has been appointed; and
  - (c) no liquidator has been appointed by the High Court under section 32; and
  - (d) no notice of dissolution has been delivered under section 30;

the company shall be deemed to be defunct until a new liquidator is appointed under subsection (4) or by the High Court under section 32.

(10) This section is subject to section 27(2).

**(CAB 2009)**

## **29 Distribution of assets in winding up**

(1) In winding up a limited liability company, debts and liabilities shall be settled in the following order-

- (a) creditors and others having any claim against the company in respect of any liability or obligation, except those to members of the limited liability company on account of their contributions;
- (b) members of the limited liability company in respect of their share of the profits and other compensation by way of income on their contributions; and
- (c) members of the limited liability company in respect of their contributions to capital.

(2) In winding up a limited liability company there shall be paid in priority to all other debts the debts specified in the Preferential Payments Act 1908.

(3) Subject to the operating agreement, members share in the assets of a limited liability company in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of the claims.

## **30 Dissolution**

(1) When all debts, liabilities and obligations have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets have been distributed to the members, notice of dissolution in the prescribed form shall be delivered to the Commission.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(2) On receipt of the notice of dissolution under subsection (1) the Commission shall issue a certificate of dissolution in the prescribed form.

[Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(3) On the issue of the certificate of dissolution the company is dissolved.

### **31 Application of bankruptcy rules in winding up of insolvent limited liability companies**

In the winding up of an insolvent limited liability company the same rules shall apply with respect to the rights of secured and unsecured creditors and to debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt.

### **32 Jurisdiction of the High Court**

(1) The High Court shall have the power to order the winding up and dissolution of a limited liability company on such terms as it may think fit and may do or secure the doing of all such things as appear necessary or expedient for such winding up and dissolution.

(2) Sections 28 and 30 shall not apply in respect of the winding up and dissolution of a limited liability company by order of the High Court.

### **33 Application of Part X of the Companies Act 1931**

(1) Part X of the Companies Act 1931 shall apply as if a limited liability company were an unregistered company within the meaning of section 306 of that Act.

(2) This section is without prejudice to the jurisdiction and powers of the High Court under section 32.

### **34 Property discovered after dissolution**

(1) Where, after the dissolution of a limited liability company, there is discovered any property of the company-

(a) the registered agent in office at the time of dissolution; or

(b) if there is no such agent, the members of the company at that time,

shall, subject to subsection (2), thereafter be trustee for the members and creditors of the dissolved limited liability company and as such shall have authority to distribute any such company property, convey land and take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

(2) Where the members of a limited liability company are trustees by virtue of subsection (1), they may at any time by unanimous written agreement appoint a person to act as trustee in their place and shall, upon making such an appointment, forthwith deliver a notice of appointment in the prescribed form to the Commission.

[Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(3) On the delivery of the notice of appointment to the Commission under subsection (2), the appointed person shall be the trustee for the members and creditors of the dissolved limited liability company in place of the members and as such shall have authority to distribute the company property discovered after dissolution, convey land and take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

[Subs (3) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

### **35 Power of court to declare dissolution of limited liability company void**

(1) The High Court may at any time within 2 years of the date of dissolution of a limited liability company, make an order declaring the dissolution to have been void.

(2) On the making of an order under subsection (1), the company shall be deemed to have continued in existence as if it had not been dissolved but only for the purpose of winding up its affairs or distributing its property.

(3) An order under subsection (1) may be made upon such terms as the court thinks fit.

(4) An application for an order under subsection (1) may be made by any member or creditor of the company or any person who appears to the court to be interested in the company.

(5) It shall be the duty of the person on whose application the order was made, within 7 days after the making of the order, or such further time as the court may allow, to deliver to the Commission for registration a copy of the order, and if that person fails so to do that person

shall be guilty of an offence and on summary conviction shall be liable to a fine not exceeding £5,000.

[Subs (5) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

### **36 Offences**

Schedule 4 (offences antecedent etc. to winding up) shall have effect.

## **PART 3 TAXATION**

### **CHAPTER I**

[Chapter 1 (ss 37 to 45) repealed by Income Tax (Corporate Taxpayers) Act 2006 Sch.]

### **CHAPTER II**

## **TAXATION OF OTHER LIMITED LIABILITY COMPANIES**

### **46 [Inserts section 2M in the Income Tax Act 1970.]**

[S 46 amended by Statute Law Revision Act 1997 Sch 1.]

### **47 [Inserts section 63A in the Income Tax Act 1970.]**

## **PART 4 GENERAL**

### **48 Inspection of documents by the public**

(1) Any person may inspect-

- (a) a copy of any document kept by the Commission under this Act;  
[Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]
- (b) if the copy is illegible or unavailable, the document itself.

(2) In subsection (1), a copy is to be treated as the copy of a document if it is taken from a copy or other reproduction of the original.

### **49 Offences: members and officers**

Where an offence by a limited liability company was committed with the consent or connivance of, or was attributable to any neglect on the part of, any member, registered agent, manager or similar officer of the company, or any person who was purporting to act as any such officer, that person shall also be guilty of the like offence as the body corporate and shall be punishable accordingly.

### **50 Fees**

The Commission may, with the concurrence of the Treasury, by order prescribe the fees and duties to be paid in respect of limited liability companies, the filing of documents, the issue of certificates, the inspection of documents and the exercise of functions by the Commission under this Act.

[S 50 substituted by Companies, etc. (Amendment) Act 2003 s 19.]

### **51 Public documents**

(1) The Treasury may make such regulations as are necessary to give effect to Part 3.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(1A) The Financial Supervision Commission may make such regulations as are necessary to give effect to Parts 1 and 2, and Schedules 1 to 4.

[Subs (1A) inserted by Companies (Transfer of Functions) Act 2000 Sch 2.]

(2) Regulations under this Act shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

### **51A Interpretation**

In this Act '**Commission**' means the Financial Supervision Commission.

[S 51A inserted by Companies, etc. (Amendment) Act 2003 Sch 1.]

### **52 (1) [Amends section 79 of the Companies Act 1931 by inserting subsection (3A).]**

(2) [Amends the proviso to section 290(1) of the Companies Act 1931 by inserting paragraph (ia).]

(3) (a) .....

[Para (a) repealed by Companies, etc. (Amendment) Act 2003 Sch 2.]

(b) [Amends section 313(1)(b) of the Companies Act 1931 by inserting '(if any)' after 'directors and secretaries' wherever this expression occurs.]

(c) [Amends section 315(2) of the Companies Act 1931 by inserting '(if any)' after 'directors and secretaries'.]

(d) [Amends section 321 of the Companies Act 1931 by inserting the definition of 'limited liability company'.]

(4) (a) [Amends section 49 of the Partnership Act 1909 by inserting subsections (1C) and (1D).]

(b) [Amends section 49A of the Partnership Act 1909 as follows: subparagraph (i) inserts 'Subject to subsection (2A),' in subsection (2) at the beginning; and subparagraph (ii) inserts subsection (2A).]

(c) [Amends section 50 of the Partnership Act 1909 by repealing paragraph (g).]

(d) [Amends section 51(1B) of the Partnership Act 1909 as follows: subparagraph (i) repeals in paragraph (d) the words ', and the sum contributed by,'; and subparagraph (ii) repeals in paragraph (e) the words ', and the sum which was contributed by,'.]

## **52A Power to make orders as to disposal of valueless documents**

(1) Where a limited liability company has been dissolved under this Act or otherwise, the Commission after consultation with the Chief Registrar may at any time after the expiration of 12 years (or 2 years where subsection (2) applies) from the date of dissolution, order the disposal, by destruction or otherwise, of documents relating to that company which are in the register of companies, the Public Record Office or any repository referred to in section 1(5) of the Public Records Act 1999 and which are not of sufficient public value to justify their preservation.

(2) The Commission may make an order under subsection (1) at any time after the expiration of 2 years from such dissolution if it is satisfied that it has in its custody a copy of any document disposed of under that subsection.

(3) A copy of any document to which subsection (2) applies shall for the purposes of this Act, be treated as if it were the original document and if the copy is not kept in a legible form, any duty of the Commission to allow inspection of, or to furnish a copy of, the document or any part of it is to be treated as a duty to allow inspection of, or to furnish a reproduction of the copy or of the relevant part of it in legible form.

[S 52A inserted by Companies, etc. (Amendment) Act 2003 s 20.]

## **53 Financial provision**

There shall be paid out of money provided by Tynwald any expenses of the Treasury and the Commission under this Act.

[S 53 amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

## **54 Short title and commencement**

(1) This Act shall be cited as the Limited Liability Companies Act 1996.

(2) This Act shall come into force on such day as the Treasury may by order appoint and different days may be so appointed for different provisions and for different purposes.

[ADO (ss 52(1), 54) 1/8/1996 (SD476/96); (remainder of Act) 17/10/1996 (SD553/96).]

## **Schedule 1**

### **Status and Powers of Limited Liability Companies**

1. To sue and be sued, complain and defend, in its name.
2. To purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or an interest in it, wherever situated.
3. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
4. To lend money to and otherwise assist its members, managers and employees.
5. To 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 limited liability companies, domestic or foreign corporations, associations, general or limited partnerships or individuals, or direct or indirect obligations of the Island or of any government, state, territory, governmental district or municipality or of any instrumentality of it.
6. To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its 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.

7. To 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.

8. To conduct its business, carry on its operations and have and exercise the powers granted by this Act anywhere in the world.

9. To elect or appoint managers, officers, employees and agents of the limited liability company, and define their duties and authority, which may include authority also delegated to the members or managers under sections 17 and 18, and fix their compensation.

10. To make and alter operating agreements, not inconsistent with its articles of organisation or with the laws of the Island, for the administration and regulation of the affairs of the limited liability company.

11. To indemnify a member or manager or former member or manager of the limited liability company against expenses actually and reasonably incurred by him or it in connection with the defence 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 to the company for negligence or misconduct in the performance of duty or to have received improper personal benefit on account thereof

12. To make any other indemnification that is authorised by the articles of organisation or by an article of the operating agreement or resolution adopted by the members after notice.

13. To cease its activities and surrender its certificate of organisation.

14. To have and exercise all powers necessary or convenient to effect any activity, trade or business of the limited liability company.

15. To become a member of a general partnership, limited partnership, joint venture or similar association, or any other limited liability company.

16. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, ownership interest bonus plans and option plans, and benefit or incentive plans for any or all of its current or former managers, officers, employees and agents.

17. To make donations for the public welfare or for charitable, scientific or educational purposes.

## **Schedule 2**

### **Matters to be Specified in the Articles of Organisation**

1. The total amount of cash and a description and agreed value of property other than cash contributed by the members.

2. The total additional contributions, if any, agreed to be made by all members and the times at which or events upon the happening of which they shall be made.

3. The right, if given, of the members to admit additional members, and the terms and conditions of the admission.

4. The right, if given, of the remaining members of the limited liability company to continue the business on the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited liability company.

5. If the members of a limited liability company are to be permitted to elect a manager to manage the limited liability company, the articles of organisation shall so state.

6. Any other provision which the members elect to set out in the articles of organisation for the regulation of the internal affairs of the limited liability company, including any provisions which under this Act are required or permitted to be set out in the operating agreement of the limited liability company.

## **Schedule 3**

### **Registration of Charges**

*Registration of Charges with the Commission*

[Heading amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

#### **Registration of charges created by limited liability companies**

1. (1) Subject to the provisions of this Schedule, every charge created by a limited liability company and being a charge to which this paragraph applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, are delivered to the Commission

for registration within 1 month after the date of its creation.

**[Subpara (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(2) Sub-paragraph (1) is without prejudice to any contract or obligation for repayment of the money secured by a charge.

(3) When a charge becomes void under this paragraph the money secured thereby shall immediately become payable.

(4) This paragraph applies to the following charges-

- (a) a charge for the purpose of securing any issue of debentures;
- (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration;
- (c) a charge on land, wherever situate, or any interest therein;
- (d) a charge on book debts of the company;
- (e) a floating charge on the undertaking or property of the company;
- (f) a charge on a ship or an aircraft or any share in a ship;
- (g) a charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

2. (1) In the case of a charge created out of the Island comprising solely of property situate outside the Island, the delivery to and the receipt by the Commission of a copy verified in the prescribed manner of the instrument by which the charge is created or evidenced, shall have the same effect for the purposes of paragraph 1 as the delivery and receipt of the instrument itself, and 1 month after the date on which the instrument or copy could, in due course of post, and if dispatched with due diligence, have been received in the Island, shall be substituted for one month after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be delivered to the Commission.

**[Subpara (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(2) Where a charge is created in the Island but comprises property outside the Island, the instrument creating or purporting to create the charge may be sent for registration under paragraph 1 notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(3) Where a negotiable instrument has been given to secure the payment of any book debts of a limited liability company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of paragraph 1 be treated as a charge on those book debts.

(4) The holding of debentures entitling the holder to a charge on land shall not for the purposes of paragraph 1 be deemed to be an interest in land.

(5) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a limited liability company, it shall for the purposes of paragraph 1 be sufficient if there are delivered to or received by the Commission within 1 month after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series the following particulars-

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Commission for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

**[Subpara (5) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**

(6) Where any commission, allowance, or discount has been paid or made either directly or indirectly by a limited liability company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this paragraph shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this subsection be treated as the issue of the debentures at a discount.

(7) In this Schedule, the expression 'charge' includes mortgage.

**Duty of limited liability company to register charges created by company**

3. (1) It shall be the duty of a limited liability company to send to the Commission for registration the particulars of every charge created by the company and of the issue of debentures of a series, requiring registration under paragraph 1, but registration of any such charge may be effected on the application of any person interested therein.

[Subpara (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(2) Where registration is effected on the application of some person other than the company that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Commission on the registration.

[Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(3) If any limited liability company makes default in sending to the Commission for registration the particulars of any charge created by the company, or of the issues of debentures of a series, requiring registration as aforesaid, then, unless the registration has been effected on the application of some other person, the company and every member, registered agent, or other person, who is knowingly a party to the default shall be guilty of an offence and shall be liable-

- (a) on conviction on information, to a fine;
- (b) on summary conviction, to a fine not exceeding £5,000.

[Subpara (3) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

**Duty of limited liability company to register charges on property acquired**

4. (1) Where a limited liability company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Schedule, the company shall cause the prescribed particulars of the charge, together with the instrument or a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Commission for registration within one month after the date on which the instrument or the acquisition is completed:

Provided that, if the property is situate and the charge was created outside the Island, 1 month after the date on which the instrument or copy of the instrument could, in due course of post, and if dispatched with due diligence, have been received in the Island, shall be substituted for one month after the completion of the acquisition as the time within which the particulars and the instrument or the copy of the instrument are to be delivered to the Commission.

[Subpara (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(2) If default is made in complying with this paragraph, the limited liability company and every officer of the company who is knowingly a party to the default shall be guilty of an offence and shall be liable-

- (a) on conviction on information, to a fine;
- (b) on summary conviction, to a fine not exceeding £5,000.

**Registration of supplemental particulars**

4A. (1) Further particulars of a charge registered (1) under paragraph 1 or paragraph 4, which supplement or vary the registered particulars, may be delivered to the Commission under this paragraph by the limited liability company or the chargee or any person interested for registration at any time, provided that-

- (i) the further particulars do not of themselves, constitute the creation of a charge by the company;
- (ii) the further particulars are in the prescribed form signed by or on behalf of the company or the chargee or the person interested; and
- (iii) if further particulars are delivered to the Commission for registration and appear to it to be duly signed, the Commission shall file the particulars in the register relating to the company and shall note, in such form as it thinks fit, the date on which they were delivered to it.

[Subpara (1) inserted by Companies, etc. (Amendment) Act 2003 Sch 1.]

(2)

[Not yet in operation. For text see Companies, etc. (Amendment) Act 2003 Sch 1 para 5.]

(3) Paragraph 3 (duty of limited liability company to register charges created by company) and paragraph 4 (duty of company to register charges on property acquired) shall not apply in respect of this paragraph.

[Subpara (3) inserted by Companies, etc. (Amendment) Act 2003 Sch 1.]

### **Entry of satisfaction**

5. The Commission may, on evidence being given to its satisfaction that the debt for which any registered charge was given has been paid or satisfied, register a memorandum of satisfaction in the prescribed form.

[Para 5 amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by Interpretation Act 1976 s 16A.]

### **Rectification of register of charges**

6. The High Court, on being satisfied that the omission to register a charge within the time required by this Schedule, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum of satisfaction, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or mis-statement shall be rectified.

### **Registration of enforcement of security**

7. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a limited liability company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within 7 days from the date of the order or of the appointment under the said powers deliver a notice in the prescribed form to the Commission.

[Subpara (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(2) Where any person appointed receiver or manager of the property of a limited liability company under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, deliver to the Commission notice in the prescribed form.

[Subpara (2) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(3) If any person makes default in complying with the requirements of this paragraph he shall be guilty of an offence and shall be liable-

- (a) on conviction on information, to a fine;
- (b) on summary conviction, to a fine not exceeding £5,000.

*Provisions as to Limited Liability Company's Register of Charges and as to Copies of Instruments creating Charges*

### **Copies of instruments creating charges to be kept by limited liability company**

8. Every limited liability company shall cause a copy of every instrument creating any charge requiring registration under this Schedule to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

### **Limited liability company's register of charges**

9. (1) Every limited liability company shall keep at the registered office of the company a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company, giving in each case a short description of the property charged, the amount of the charge, and, except in the case of securities to bearer, the names of the persons entitled thereto.

(2) If any member, registered agent, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this paragraph, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000.

### **Right to inspect copies of instruments creating mortgages and charges and limited liability company's register of charges**

10. (1) The copies of instruments creating any charge requiring registration under this Schedule with the Commission, and the register of charges kept in pursuance of paragraph 9, shall be open during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day shall be allowed for inspection, to the inspection of any creditor or member of the company without fee, and the register of charges shall also be open to the inspection of any other person on payment of such reasonable fee, for each inspection, as the company may require.

[Subpara (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every member, registered agent and manager of the company authorising

or knowingly and wilfully permitting the refusal, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000.

(3) If any such refusal occurs in relation to a limited liability company, the High Court may by order compel an immediate inspection of the copies or register.

#### Schedule 4

### Offences etc. Antecedent to or in the Course of Winding Up

#### Offences by members etc. of companies in liquidation

1. (1) If any person, being a past or present member, manager or registered agent of a limited liability company which at the time of the commission of the alleged offence is being wound up or is subsequently wound up-

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or
- (b) does not deliver up to the liquidator, or as he directs, all such part of the real and personal property of the company as is in his custody or under his control, and which he is required by law to deliver up; or
- (c) does not deliver up to the liquidator, or as he directs, all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; or
- (d) within 12 months next before the commencement of the winding up or at any time thereafter conceals any part of the property of the company, or conceals any debt due to or from the company; or
- (e) within 12 months next before the commencement of the winding up or at any time thereafter fraudulently removes any part of the property of the company; or
- (f) makes any material omission in any statement made to the liquidator of the company relating to the affairs of the company; or
- (g) knowing or believing that a false debt has been proved by any person under the winding up, fails for the period of one month to inform the liquidator thereof; or
- (h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company; or
- (i) within 12 months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of, any book or paper affecting or relating to the property or affairs of the company; or
- (j) within 12 months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company; or
- (k) within 12 months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulent parting with, altering, or making any omission in, any document affecting or relating to the property or affairs of the company; or
- (l) within 12 months next before the commencement of the winding up or at any time thereafter attempts to account for any part of the property of the company by fictitious losses or expenses; or
- (m) has within 12 months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay for; or
- (n) within 12 months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
- (o) within 12 months next before the commencement of the winding up or at any time thereafter pawns, pledges, or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging, or

- disposing is in the ordinary way of the business of the company; or
- (p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up,
- he shall be guilty of an offence and shall be liable-
- (a) on conviction on information to custody for a term not exceeding 5 years or to a fine, or to both;
- (b) on summary conviction to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.
- (2) It shall be a good defence-
- (a) to a charge under sub-paragraph (1)(a), (b), (c), (d), (f), (n), or (o), if the accused proves that he had no intent to defraud, and
- (b) to a charge under sub-paragraph (1)(b), (i) or (j), if he proves that he had no intent to conceal the state of affairs of the company.

### **Penalty for falsification of books**

2. If any member, manager or registered agent of any limited liability company being wound up destroys, mutilates, alters, or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person, he shall be guilty of an offence, and be liable to custody for a term not exceeding 2 years or to a fine, or to both.

### **Frauds by members etc. of companies which have gone into liquidation**

3. If any person, being at the time of the commission of the alleged offence a member, manager or registered agent of a limited liability company-
- (a) has by false pretences or by means of any other fraud induced any person to give credit to the company; or
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the company;
- he shall be guilty of an offence and shall be liable-
- (a) on conviction on information to custody for a term not exceeding 2 years or to a fine, or to both;
- (b) on summary conviction to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.

### **Responsibility for fraudulent trading**

4. (1) If in the course of the winding up of a limited liability company it appears that any business of the company has been carried out with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the High Court, on the application of the liquidator, or any creditor of the company, may, if it thinks proper so to do, declare that any of the members, managers or registered agents, whether past or present, of the company who were knowingly parties to the carrying on of the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.

(2) Where the High Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and in particular may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any company or person on his behalf, or any person claiming as assignee from or through such person or company, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-paragraph.

(3) For the purposes of this sub-paragraph the expression 'assignee' includes any person to whom or in whose favour, by the directions of the member, manager or registered agent, the

debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-paragraph (1), every member, manager or registered agent of the company who was knowingly a party to the carrying on of the business in manner aforesaid, shall be liable-

- (a) on conviction on information to custody for a term not exceeding 2 years or to a fine, or to both;
- (b) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(5) The court may, in the case of any person in respect of whom a declaration has been made under sub-paragraph (1) or who has been convicted of an offence under sub-paragraph (4), order that such person shall not, without the leave of the court, be a registered agent or manager of or in any way, whether directly or indirectly, be concerned in or take part in the management of a company for such period, not exceeding 5 years, from the date of the declaration or of the conviction, as the case may be, as may be specified in the order, and if any person acts in contravention of an order made under this paragraph he shall, in respect of each offence, be liable-

- (a) on conviction on information to custody for a term not exceeding 2 years or to a fine, or to both;
- (b) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(6) In sub-paragraph (5) the expression 'the court' in relation to the making of an order, means the court by which the declaration was made or the court before which the person was convicted as the case may be, and in relation to the granting of leave means the High Court.

(7) The provisions of this paragraph shall have effect notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made, and where the declaration under sub-paragraph (1) is made in the case of a winding up the declaration shall be deemed to be a final judgment within the meaning of the Bankruptcy Acts.

(8) It shall be the duty of the liquidator to appear on the hearing of an application for leave under sub-paragraph (5), and on the hearing of an application under that sub-paragraph or under sub-paragraph (1) the liquidator may himself give evidence or call witnesses.

#### **Power of court to assess damages against delinquent members etc.**

5. (1) If in the course of winding up a limited liability company it appears that any person who has taken part in the formation or promotion of the company, or any past or present member, manager, registered agent or liquidator of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the High Court may, on the application of the liquidator or of any creditor or member, examine into the conduct of the promoter, member, manager, registered agent or liquidator, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

(2) The provisions of this paragraph shall have effect notwithstanding that the offence is one for which the offender may be criminally liable.

(3) Where in the case of a winding up an order for payment of money is made under this paragraph, the order shall be deemed to be a final judgment within the meaning of the Bankruptcy Acts.

#### **Definition**

6. In this Schedule, '**liquidator**' includes provisional liquidator.