



MONTSERRAT

## CHAPTER 11.14

# LIMITED LIABILITY COMPANY ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### LIMITED LIABILITY COMPANY ACT

Act 24 of 1998 .. in force 17 January 2000 (S.R.O. 13/2000)

Amended by Acts: 4 of 2010 .. in force 15 April 2010

13 of 2013 .. in force 25 August 2013

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### LIMITED LIABILITY COMPANY (FEES) REGULATIONS – Section 75

S.R.O. 21/2000 .. in force 8 February 2000

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**CHAPTER 11.14**

**LIMITED LIABILITY COMPANY ACT**

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## CHAPTER 11.14

### LIMITED LIABILITY COMPANY ACT

*(Acts 24 of 1998, 4 of 2010 and 13 of 2013)*

AN ACT TO MAKE PROVISION FOR THE FORMATION AND REGULATION OF LIMITED LIABILITY COMPANIES IN MONTSERRAT.

#### Commencement

*[17 January 2000]*

#### Short title

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

#### PART 1

#### PRELIMINARY

#### Definitions

2. In this Act—

“**certificate of formation**” means the certificate referred to in section 9 and the certificate as amended;

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

“**court**” means the High Court of the Eastern Caribbean Supreme Court or a judge thereof;

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

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

“**foreign LLC**” means a LLC formed under the laws of any foreign jurisdiction and designated as such under the laws of that jurisdiction;

“**LLC**” or “**domestic LLC**” means an entity formed in accordance with sections 6 and 7; *(Substituted by Act 4 of 2010)*

“**LLC agreement**” or “**agreement**” means a written agreement of the members as to the affairs of a company and the conduct of its business;

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

“**liquidator**” means a person performing the winding-up of a LLC;

“**manager**” means a person who is named or designated as a manager of a LLC or in a LLC agreement or similar instrument under which the company is formed;

“**member**” means a person who has been admitted to membership of a LLC in accordance with section 20 or, in the case of a foreign LLC in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign LLC is formed;

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

“**Registrar**” means the Registrar of Companies.

### **Nature of business and capacity**

3. A LLC may carry on any lawful business, purpose or activity not prohibited by any law for the time being in force in Montserrat.

### **Business transactions**

4. A LLC has the capacity and subject to this Act the rights, powers and privileges of an individual. Except as provided in a LLC agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with an LLC and, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

### **Indemnity**

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

PART 2

FORMATION AND OPERATION OF LLC

**Formation**

6. (1) Subject to subsection (2), one person or more may form a LLC by executing an instrument of formation to the Registrar together with the prescribed fee and filing it with the Registrar.

(2) No individual who—

- (a) is less than eighteen years of age;
- (b) is of unsound mind and has been so found by a tribunal in Montserrat or elsewhere; or
- (c) has the status of a bankrupt;

shall form or join in the formation of a LLC under this Act.

**Formalities**

7. (1) The instrument of formation must set out, in respect of the proposed LLC—

- (a) the proposed name of the LLC;
- (b) the purpose for which the LLC is formed;
- (c) the duration of the LLC;
- (d) the registered office of the LLC in Montserrat and the name and address of its agent, in Montserrat;
- (e) the names and addresses of the members authorised under section 29(2); and
- (f) the name and address of each member who signed the articles of organisation.

(2) The instrument may set out any provision permitted by this Act or by law permitted to be set out in the by-laws of the LLC.

**Amendment of certificate**

8. Where during the existence of a LLC any change is made to or occurs in, any of the following particulars, namely—

- (a) the name of the LLC;
- (b) any statement in the instrument;
- (c) the time stated in the articles as the duration of the LLC; or
- (d) any other matter affecting the certificate;

the instrument shall be amended and executed in the same manner as the original instrument and a copy filed with the Registrar.

**Certificate of formation**

9. Upon receipt of the instrument of formation, the Registrar shall issue a certificate of formation and the certificate is conclusive proof of the formation of the LLC named in the certificate.

**Effective date**

10. A LLC comes into existence on the date shown in its certificate of formation.

**Name of LLC**

11. The words “**Limited Liability Company**” or the “**LLC**” shall be the last words of the name of every LLC but a LLC may be legally designated by either the full or abbreviated form.

**Name**

12. A LLC must not be formed with or have a name—

- (a) that is prohibited or refused under section 13 or under any other enactment;
- (b) that is reserved for another LLC or intended LLC under this section or any other enactment.

**Reservation of name**

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

- (a) any person intending to organise a LLC under this Act and to adopt that name;
- (b) any LLC registered in Montserrat which proposes to change its name;
- (c) any foreign LLC (by whatever name called) intending to register in Montserrat and adopt that name.

(2) The reservation of a specified name shall be made by filing with the Registrar an application, executed by the applicant, together with a duplicate copy, specifying the name to be reserved and the name and address of the applicant.

(3) The Registrar in determining that the name is available for use by a LLC, shall reserve the name for the exclusive use of the applicant for a period of 120 days.

(4) A name reserved under subsection (3) may be reserved for a further period of 120 days.

(5) The prescribed fee shall be paid at the time of the initial reservation of any name and at the time of the renewal of any such reservation.

### **Prohibited name**

**14.** No LLC shall have a name that is the same as, or similar to the name of another society, corporation, association or partnership or that is, in the opinion of the Registrar, likely to confuse or mislead the public.

### **Registered office, etc.**

**15.** Each LLC shall have and maintain in Montserrat—

- (a) a registered office, which may but need not be its place of business in Montserrat; and
- (b) a registered agent for service of process on the LLC, which agent may either be an individual resident in Montserrat whose business office is identical with the LLC's registered office, or company having an office identical with such registered office, or the LLC itself.

### **Cancellation of certificate**

**16. (1)** A certificate of formation shall be cancelled upon the dissolution and the completion of winding up of a LLC, or upon the filing of an instrument of merger or consolidation if the LLC is not the surviving or resulting entity in the merger or consolidation.

**(2)** An instrument of cancellation shall be filed with the Registrar to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a LLC and shall specify—

- (a) the name of the LLC;
- (b) the date of filing of its instrument of formation;
- (c) the reasons for filing the instrument of cancellation;
- (d) the future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and
- (e) such other information as the person filing the instrument determines.

### **Merger and consolidation**

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

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

the agreement provides being the surviving or resulting domestic LLC or other business entity.

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

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

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

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

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

any person holding an interest in any other business entity which proposes to merge or consolidate.

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

(8) An instrument of merger or consolidation is effective as an instrument of cancellation for a domestic LLC which is not the surviving or resulting entity in the merger or consolidation.

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

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

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

### **Effect of merger**

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

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

(3) Subject to any agreement to the contrary, a merger or consolidation of a domestic LLC, including a domestic LLC which is not the surviving or resulting entity in the merger or consolidation does not require the domestic LLC to wind up its affairs under section 53 or pay its liabilities and distribute its assets under section 60.

## Signatures

19. A signature on an instrument or other document to be filed with the Registrar under this Act may be effected by facsimile or other electronic means.

## PART 3

### MEMBERS

## Admission of members

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

- (a) the formation of the LLC; or
- (b) the time provided in and upon compliance with the LLC agreement or if the agreement does not so provide when the person's admission appears in the records of the LLC.

(2) After the formation of a LLC, a person acquiring an interest therein is admitted as a member of the LLC—

- (a) in the case of a person acquiring a LLC interest directly from the LLC, when the person's admission appears in the records of the LLC upon compliance with the LLC agreement or, if the LLC agreement does not so provide, upon the consent of all members;
- (b) in the case of an assignee of a LLC interest when any such person's admission appears in the records of the LLC upon compliance with the LLC agreement or, if the LLC agreement does not so provide, as provided in Part 7.

(3) A person may be admitted to a LLC as a member thereof and may receive an interest without making a contribution or being obligated to make a contribution to the LLC.

(4) The terms and conditions of a person's admission to the LLC may be specified in a separate agreement with the LLC which is deemed to be incorporated into the LLC agreement.

## Classes and voting rights of members

21. (1) A LLC agreement may provide for classes or groups of members having such relative rights, powers and duties as the agreement may



provide, and may make provision for the creation in the manner provided of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties ranking prior to existing classes and groups of members.

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

(3) A LLC agreement may grant to all or certain identified members or a specified class or group of members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

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

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

### **Liability to third parties**

22. Except as otherwise provided in section 45 the debts, obligations and liabilities of a LLC whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the LLC and no member or manager of a LLC is liable personally for any such debt, obligation or liability of the LLC solely by reason of being a member or manager of the LLC.

### **Cessation of membership**

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

- (a) makes an assignment for the benefit of creditors;
- (b) files for voluntary winding-up;
- (c) is adjudged a bankrupt or insolvent, or has entered against him an order for relief, in any bankruptcy or insolvency proceedings;
- (d) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment,

liquidation, dissolution or similar relief under any statute, law or regulation;

- (e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding referred to in paragraph (c) or (d);
- (f) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties;
- (g) dies;
- (h) is declared incompetent;
- (i) resigns or is expelled.

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

### Access to and confidentiality of information

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

- (a) true and full information regarding the status of the business and financial condition of the LLC;
- (b) a current list of the name and last known business, residence or mailing address of each member, holder of an economic interest and manager;
- (c) a copy of any written LLC agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the agreement and any certificate and all amendments thereto have been executed;
- (d) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which

each member has agreed to contribute in the future, and the date on which each became a member; and

(e) such other information regarding the affairs of the LLC as is just and reasonable.

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

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

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

### Accounting Records

25. (1) A LLC shall keep reliable accounting records, including underlying documentation, that—

(a) are sufficient to record and explain the transactions of the LLC;

(b) will at any time enable the financial position of the LLC to be determined with reasonable accuracy; and

(c) allow financial statements to be prepared and audited.

(2) Without limiting subsection (1), the accounting records must contain—

(a) entries from day to day of all sums of money received and expended by the LLC and the matters in respect of which the receipt and expenditure takes place; and

(b) a record of the assets and liabilities of the LLC.

(3) The accounting records under subsection (1) shall be kept for at least seven years following their creation.

(4) A LLC or a member or manager of a LLC that fails to comply with this section commits a summary offence and is liable to a fine of \$5,000.

(5) For the purposes of this section, “underlying documentation” refers to any document that serves as evidence of a transaction and includes invoices, cash receipt, cheques and contracts.

*(Inserted by Act 13 of 2013)*

### Form of records

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

**Remedies for breach**

27. A LLC agreement may provide that—

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

**PART 4****MANAGERS****Managers**

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

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

**Management of LLC**

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

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

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

(4) Subject to section 40, a manager ceases to be manager as provided in the agreement.

**Contributions by manager**

30. (1) Unless otherwise provided in a LLC agreement a manager of a LLC may make contributions to the company and share in the profits and losses of and distributions from the LLC as a member.

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

subject to the restrictions and liabilities, of a member to the extent of his participation in the LLC as a member.

### **Classes and voting rights**

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

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

**(3)** A LLC agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

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

### **Remedies**

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

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

### **Indemnity**

**33.** A member or manager of a LLC shall be protected in relying in good faith upon the records of the LLC and upon such information, opinions, reports or statements presented to the LLC by any of its other managers, members, officers, employees, or committees of the LLC, or by any other person as to matters the members or manager reasonably believes are within such other person's professional or expert competence and who has

been selected with reasonable care by or on behalf of the company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the LLC or any other facts pertinent to the existence, and amount of assets from which distribution to members might properly be paid.

## PART 5

### FINANCIAL MATTERS

#### **Form of contribution**

**34.** The contribution of a member to a LLC may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

#### **Liability for contribution**

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

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

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

**(4)** Notwithstanding the compromise, a creditor of a LLC who extends credit after the entering into of a LLC agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return.

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

### **Profits and losses**

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

### **Allocation of distributions**

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

## **PART 6**

### **DISTRIBUTION AND RESIGNATION**

#### **Interim distribution**

38. Except as provided in this Part, to the extent and at the times or upon the happening of the events specified in a LLC agreement, a member is entitled to receive from a LLC distributions before his resignation from the LLC and before the dissolution and winding up thereof.

#### **Resignation of manager**

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

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

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

#### **Resignation of member**

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

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

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

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

### **Distribution upon resignation**

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

### **Distribution in kind**

42. (1) Except as provided in the LLC agreement, a member regardless of the nature of his contribution, has no right to demand and receive any distribution from a LLC in any form other than cash.

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

### **Right to distribution**

43. (1) Subject to sections 45 and 54, and unless otherwise provided in a LLC agreement, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the LLC with respect to the distribution.

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

### **Limitations**

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



LLC only to the extent that the fair value of that property exceeds that liability.

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

## PART 7

### ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

#### **Nature of interest**

45. (1) A LLC interest is personal property.

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

#### **Assignment of interest**

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

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

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

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

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

(4) Unless otherwise provided in the LLC agreement, the pledge of or granting of a security interest, lien or other incumbrance in or against, any or all of the economic interests of a member does not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(5) A LLC agreement may provide that, a member's interest in the company may be evidenced by a certificate of the interest issued by the company.

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

(7) A holder of an economic interest may bring an action to enforce his rights to receive a distribution of profits, losses or other distribution due

to him from the LLC or to enforce an accounting for distributions which were improperly made.

### **Right of judgement creditor**

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

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

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

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

- (a)* with the approval of the members of the LLC other than the member assigning his interest; or
- (b)* upon compliance with any procedure provided for in the LLC agreement.

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

**(3)** Notwithstanding subsection (2), and subject to subsection (4), unless otherwise provided in a LLC agreement, an assignee who becomes a member assumes the obligations of his assignor to make contributions as provided in section 36, but is not liable for the obligations of his assignor under Part 6.

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

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

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

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

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

## PART 8

### DISSOLUTION

#### **Dissolution**

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

#### **Judicial dissolution**

**51.** On the application of a member or manager the Court may dissolve the LLC when it considers that it is not reasonably practicable to carry on the business in conformity with the agreement.

#### **Winding up company**

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

(2) Upon dissolution of a LLC and the filing of an instrument of cancellation as provided in section 11, the persons winding up the company's affairs may in the name of, and for and on behalf of, the company, prosecute and defend suits, whether civil, criminal or administrative, settle and close the company's business, dispose of and convey the company's property, discharge or make reasonable provision for the company's liabilities, and distribute to the members any remaining assets of the company, without affecting the liability of members and managers and without imposing liability on a liquidator.

#### **Distribution of assets**

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

- (a) to creditors, including members or managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the company (whether by payment or the making of reasonable provision for payment

thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under section 39; or

- (b) unless otherwise provided in the agreement, to members and former members in satisfaction of liabilities for distributions under section 39 or 42; and
- (c) unless otherwise provided in the agreement, to members first for the return of their contributions and second respecting their economic interests, in the proportions in which the members share in distributions.

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

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

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

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

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

## Strike-off

54. The Registrar shall strike from the Register an LLC which has been dissolved or the Term of which has ended.

## PART 9

### TRANSFER OF DOMICILE

## Definitions

55. In this Part—

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

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

### **Transfer of domicile**

56. Any foreign LLC may, subject to and upon compliance with this Part, transfer its domicile to Montserrat.

### **Application to transfer domicile**

57. Any foreign LLC may transfer its domicile to Montserrat by filing with the Registrar an application which must be executed in accordance with section 61 and filed with the Registrar.

### **Contents of application**

58. The application must contain—

- (a) the date on which and the jurisdiction in which the LLC was formed, created or otherwise came into existence;
- (b) the name of the LLC;
- (c) the foreign jurisdiction that constitutes the domicile;
- (d) a declaration that the transfer of domicile has been approved by all necessary company action;
- (e) a declaration that the transfer of domicile is made in good faith and will not serve to hinder, delay or defraud existing members, creditors, claimants or other parties in interest;
- (f) the name and address of the LLC's registered office and agent in Montserrat; and
- (g) any other information required to be specified in the instrument of formation under section 6; and
- (h) the amendments of its certificate of formation or its equivalent, that are to be effective upon filing the application.

### **Documentation to be submitted**

59. The application to transfer shall be submitted to the Registrar and must be accompanied by—

- (a) a certificate evidencing its existence issued by an authorized officer of the foreign domicile; and
- (b) a certified copy of the certificate of formation, with amendments if any, and if the documents are not in English, a certified translation thereof.

### **Who may execute application**

60. The application to transfer domicile must be in English and signed by any company officer, director, agent, trustee, manager, partner or any other person performing functions equivalent to those of any officer or

manager, however named or described who is authorized to sign such an application on behalf of the company.

### **Certificate of transfer of domicile**

**61. (1)** Upon the filing of the application to transfer domicile and the documents referred to in sections 58 and 59 together with the payment of the prescribed fees, the Registrar shall, upon being satisfied that the other requirements of this Act are complied with deliver to the LLC, a certificate of transfer and the company shall become domiciled and domesticated in Montserrat as a LLC of Montserrat and shall thereafter be subject to this Act.

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

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

### **Prior liabilities**

**62.** The transfer of domicile of any LLC to Montserrat does not affect any liabilities of the company incurred prior to the transfer.

### **Applicable law**

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

### **Departure**

**64.** Any LLC formed, created, or otherwise existing under or subject to this Act may become domiciled in any foreign jurisdiction upon compliance with this Act and the laws of the jurisdiction to which the company seeks to become domiciled.

### **Certificate of departure**

**65.** Any LLC described in section 64 shall file with the Registrar a certificate of departure which must be executed in the same manner as an application to transfer domicile and must contain—

- (a)* the names and addresses of the company's creditors and the total amount of its indebtedness to such creditors, and the names and addresses of all persons or entities which have notified the LLC in writing of a claim in excess of \$1,000 and the total amount of such claims; and

- (b) that the intended departure from Montserrat and transfer of domicile to a foreign jurisdiction is unlikely to be detrimental to the rights or property interests of any creditor of or claimant against the company; and
- (c) that the company at the time of application to the foreign jurisdiction is not in breach of any duty or obligation imposed upon it by this Act or any other law of Montserrat; and
- (d) that the transfer of domicile to the foreign jurisdiction is made in good faith and will not serve to hinder, delay or defraud existing members or other parties in interest; and
- (e) a consent and agreement by the company that it may be served with process in Montserrat in any proceeding arising out of actions or omissions occurring prior to its departure from Montserrat, which agreement shall include the appointment of the Registrar or the registered agent as the agent of the company to accept such service of process and an address to which a copy of such process shall be forwarded.

### **Effective departure**

66. Upon payment of all fees outstanding in Montserrat and upon compliance with this Act and applicable laws for transfer of domicile to the foreign jurisdiction, the departing company shall notify the Registrar as to the effective date of the transfer of domicile from Montserrat and from that date the company is deemed to have ceased to be a LLC domiciled in Montserrat.

### **Jurisdiction of court**

67. Nothing in this Part obviates, diminishes or affects the jurisdiction of any court in Montserrat to hear and determine any proceedings commenced therein by or against the company arising out of actions or omissions which occurred before the LLC ceased to be domiciled in Montserrat.

## PART 10

### DERIVATIVE ACTIONS

### **Right to bring actions**

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

### Proper plaintiff

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

### Complaint

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

### Expenses

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

## PART 11

### EXEMPTION FROM TAX

#### Exemptions from tax

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

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

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



### **Exemptions for dividends and distributions**

73. In addition, any dividend or distribution by a LLC which does no business in Montserrat to another such company, or to individuals or entities which are not residents of Montserrat is exempt from any tax in Montserrat which would otherwise be applicable to such company or the recipient of the dividend or distribution.

### **Guarantees**

74. The benefits and exemptions contained in this Act shall apply for a period of twenty five years in respect of the company.

## **PART 12**

### **MISCELLANEOUS**

### **Regulations**

75. The Governor acting on the advice of Cabinet may make regulations in general for the better carrying out of the provisions of this Act and for prescribing anything required to be prescribed under this Act.

*(Amended 9 of 2011)*

### **Construction and application**

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

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

### **Recovery of penalties**

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

**LLC struck off liable fees, etc.**

**78. (1)** A LLC formed under this Act continues to be liable for all licence fees and penalties payable under this Act notwithstanding the name of the company has been struck off the Register and those licence fees and penalties have priority over all other claims against the assets of the company.

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

**Consolidated Fund**

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

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LIMITED LIABILITY COMPANY (FEES) REGULATIONS – SECTION 75

(S.R.O. 21/2000)

**Commencement**

[8 February 2000]

**Short title**

1. These Regulations may be cited as the Limited Liability Company (Fees) Regulations.

**Fees**

2. There shall be paid to the Registrar in respect of the matters prescribed therein the fees set out in the Schedule hereto.

**Interpretation**

3. In these regulations “\$” means a dollar in the currency of the United States of America.

**SCHEDULE**

(Regulation 2)

PART 1

<i>Matters in respect of which a fee is payable</i>	<i>Amount of fee</i>
1. For reservation of name or renewal thereof under section 4 .....	\$10
2. For filing—	
(a) certificate of amendment under section 8 .....	\$50
(b) certificate of formation under section 9 .....	\$50
(c) certification of cancellation under section 16 .....	\$50
(d) certificate of merger or consolidation under section 17 ...	\$50
3. For each certified copy of a filed document .....	\$20
4. For filing an application for transfer of domicile under section 61	\$50
5. For filing certificate of departure under section 65 .....	\$50
6. For certificate reciting all the LLC’s filings .....	\$100
7. For any other certificate .....	\$20
8. For receiving or indexing any affidavit or other paper provided by the Act for which no fee is specifically provided .....	\$25

## PART 2

Licence fees are payable as follows—

- (a) a LLC which is registered on 31 December in any year shall before 1 July of the following year pay the Registrar an annual licence fee of \$100;
  - (b) a LLC which fails to pay the amount due as the licence fee under subparagraph (a) by the date specified herein, shall pay a penalty of an additional amount of 10% of the licence fee;
  - (c) a LLC which fails to pay the licence fee and additional amount due under subparagraph (b) by 31 October subject to a further penalty of 50% of the licence fee.
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