ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER L65

LIMITED LIABILITY COMPANY ACT

Showing the Law as at 31 December 2022

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

This Edition consolidates—

Act 3/2014, in force 2 May 2014
Act 2/2019, in force 1 January 2019
Act 4/2021, in force 1 February 2021

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LIMITED LIABILITY COMPANY ACT

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LIMITED LIABILITY COMPANY ACT

PART 1

PRELIMINARY

Definitions

1. In this Act—

"Anguilla company" means a company formed or continued under this Act, a company incorporated or continued under the Companies Act* or a company incorporated or continued under the International Business Companies Act†;

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

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

"Court" means the High Court;

"dollar" or "$" means a dollar in the currency of the United States of America;

"economic interest" means a member's share of the profits and losses of 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;

"Judge" means a Judge of the Court;

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

"liquidator" means a person carrying out the winding up of a LLC;

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

"LLC interest" means the totality of a member's interest including all rights incidental to membership as may be provided in a LLC agreement or otherwise provided by this Act, 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;

"manager" means a person appointed to be a manager of a LLC under section 29;

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

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* Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

† Business Companies Act, 2022 (Act 2/2022) *repealed* the International Business Companies Act, R.S.A. c. I20.

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"Minister" means the Minister responsible for finance;

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

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

"Registrar" means the Registrar of Companies;

"relevant licence" means—

(a) a licence issued under the Company Management Act; or

(b) a licence issued under the Trust Companies and Offshore Banking Act.

Name of LLC

2. The name of a LLC—

(a) must contain the words "Limited Liability Company" or the abbreviation "LLC";

(b) may contain the name of a member or manager;

(c) must not be the same as or similar to the name of any corporation, limited partnership, business, trust or LLC, registered, formed or organised under the laws of Anguilla or reserved under this or any other Act; and

(d) must not be a name prohibited—

(i) by any other law in force in Anguilla, or

(ii) by regulations made by the Governor under section 106.

Reservation of name

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

(a) any person intending to form a LLC under that name;

(b) any LLC that proposes to change its name; or

(c) any foreign LLC (by whatever named called) intending to continue under this Act.

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

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

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

(5) The prescribed fee shall be paid—

(a) upon the filing of an application to reserve a name under subsection (2); and

(b) upon the filing of each application to renew the reservation of a name under subsection (4).

Name change

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

(a) is reserved under section 3;

(b) does not comply with section 2; or

(c) is, in the opinion of the Registrar, for any reason objectionable;

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

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

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

(a) he must issue a new certificate of formation for the LLC recording its new name; and

(b) the name of the LLC is changed to the name assigned by the Registrar.

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

Registered office

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

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

(a) name and address of every member and manager;

(b) date on which every member and manager is appointed;

(c) date every member and manager ceases to be a member or manager; and

(d) the amount of capital every member is entitled to.

(Act 3/2014, s. 1)

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

(Act 3/2014, s. 1)

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

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

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

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

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

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

Registered agent

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

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

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

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

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

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

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

Registered agent ceasing to act for LLC

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

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

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

(b) if the registered agent is not aware of the identity of any member of the LLC, to the person from whom he last received instructions concerning the LLC.

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(3) The registered agent must, within 7 days of sending a notice in accordance with subsection (2), file a copy of the notice with the Registrar.

(4) If, at the time of expiry of the notice given under subsection (1), the LLC has not filed a notice of change of registered agent under section 6(4), the Registrar shall publish a notice in the *Gazette* that, unless the LLC files notice of a change of registered agent within 30 days of the date of the publication of the notice in the *Gazette*, it will be struck off the Register and dissolved.

(5) If a LLC fails to file a notice of change of registered agent within 30 days of publication of a notice in the *Gazette* under subsection (4), the Registrar must strike the LLC off the Register whereupon it is dissolved, and the Registrar must publish a notice of the striking off and dissolution of a LLC under this section in the *Gazette*.

(6) The striking of a LLC from the Register is effective from the date of the notice published in the *Gazette*.

(7) A registered agent who contravenes subsection (3) commits an offence.

Nature of business

8. (1) Subject to subsection (2), a LLC may carry on any lawful business, purpose or activity not prohibited by any law for the time being in force in Anguilla, whether or not for profit.

(2) A LLC shall not—

(a) carry on a banking business within the meaning of the Banking Act, or a banking or trust business within the meaning of the Trust Companies and Offshore Banking Act;
(Act 2/2019, s. 2(a))

(b) carry on insurance business within the meaning of the Insurance Act or business as an insurance agent, insurance broker or insurance manager;
(Act 2/2019, s. 2(b))

(c) carry on company management business within the meaning of the Company Management Act; or

(d) own or hold an interest, whether legal or beneficial, in real property located in Anguilla, other than property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained.

(3) For the purposes of paragraph (2)(d)—

(a) a LLC is deemed to own or hold an interest in real property located in Anguilla if it owns or holds, legally or beneficially, securities in an Anguilla company or in any other body corporate—

(i) that owns or holds an interest, legal or beneficial, in real property located in Anguilla, or

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

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

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

(a) sue and be sued, complain and defend, in its name;

(b) purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest in it, wherever located;

(c) sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

(d) lend money to and otherwise assist its members;

(e) purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares or other interests in or obligations of other LLCs, domestic or foreign corporations, associations, general or limited partnerships, or individuals, or direct or indirect obligations of Anguilla or of any government, state, territory, governmental district or municipality or of any instrumentality of it;

(f) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the LLC may determine, issue notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises and income;

(g) lend money for its proper purposes, invest and reinvest its funds and take and hold real property and personal property for the payment of funds so loaned or invested;

(h) conduct its business, carry on its operations and have and exercise the powers granted by this Act in Anguilla, or in any foreign jurisdiction;

(i) elect or appoint managers and agents and define their duties and fix their compensation;

(j) make and alter operating agreements, not inconsistent with its articles or with the laws of Anguilla, for the administration and regulation of the affairs of the LLC;

(k) indemnify a member or manager or former member or manager of the LLC against expenses actually and reasonably incurred by him or it in connection with the defense of an action, suit or proceeding, civil or criminal, in which he or it is made a party by reason of being or having been such member or manager, except in relation to matters

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

(l) cease its activities and dissolve; and

(m) become a member of a general partnership, limited partnership, joint venture or similar association, company or any other LLC;

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

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

Business transactions

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

Indemnity

10. Subject to such standards and restrictions, if any, as are specified in the articles or in its LLC agreement, 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 OF LLC

Formation of a LLC

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

(2) The articles of formation must contain—

(a) the name of the LLC;

(b) the address of its first registered office and the name and address of its first registered agent;

(c) if the LLC proposes to have a specific date of dissolution, the latest date on which the LLC must dissolve;

(d) if the LLC will be formed on a date subsequent to the date of filing of the articles of formation, that date; and

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

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

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

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

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

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

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

LLC agreement

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

Amendment of articles of formation

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

(a) the name of the LLC; and

(b) the amendment to the articles.

Signing of documents

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

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

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

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

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

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

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

Powers of Court

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

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

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

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

(3) If a person required to execute a LLC agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may apply to the Court to direct the execution of the LLC agreement or amendment thereof.

(4) If the Court finds in respect of subsection (1) that the LLC agreement or amendment thereof should be executed and that any person required to execute the LLC agreement or amendment thereof has failed or refused to do so, it shall make an order granting appropriate relief.

Filing requirements

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

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

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

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

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

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

Certificate of formation is notice

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

Restated articles

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

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

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

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

(4) The restated articles of formation shall state—

(a) the LLC's present name;

(b) the name under which it was originally formed (if different);

(c) the date of filing of its original articles of formation and the future effective date or time (which must be a date or time certain) of the restated articles if they are not to be effective on filing; and

(d) that they are duly signed and are being filed in accordance with this section.

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

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

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

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

(b) if a later date is stated in the articles under paragraph (4)(c), that date.

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

Merger and consolidation

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

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

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

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

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

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

(a) the name and jurisdiction of formation or organisation of each of the LLCs or other business entities that propose to merge or consolidate;

(b) that an agreement of merger or consolidation has been approved and executed by each of the domestic LLCs or other business entities that propose to merge or consolidate;

(c) the name of the surviving or resulting domestic LLC or other business entity;

(d) the future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the articles of merger or consolidation;

(e) that the agreement of merger or consolidation is filed at a place of business of the surviving or resulting domestic LLC or other business entity, and the address thereof; and

(f) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic LLC or any person holding an interest in any other business entity that proposes to merge or consolidate.

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

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

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

(a) effect any amendment to the LLC agreement; or

(b) effect the adoption of a new LLC agreement for a LLC that 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

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

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

(3) Subject to any agreement to the contrary, a merger or consolidation of a domestic LLC, including a domestic LLC that is not the surviving or resulting entity in the merger or consolidation, does not require the domestic LLC to wind up its affairs under section 55 or pay its liabilities and distribute its assets under section 60.

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PART 3

MEMBERS

Admission of members

21. (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 in it 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; and

(b) in the case of an assignee of a LLC interest, when the person's admission appears in the records of the LLC upon compliance with the LLC agreement or, if the LLC agreement does not so provide, as provided in Part 7.

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

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

Classes and voting rights of members

22. (1) 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 that grants a right to vote may specify provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver

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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

23. Except as otherwise provided in section 47, 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.

Ceasing to be member of LLC

24. (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 reorganisation, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature;

(f) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties;

(g) dies;

(h) becomes incompetent; or

(i) resigns or is expelled.

(2) Unless otherwise provided in 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 reorganisation, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law, if the proceedings have not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

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Access to and confidentiality of information

25. (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 articles of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the agreement and any articles and all amendments thereto have been executed;

(d) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and that each member has agreed to contribute in the future, and the date on which each became a member; and

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

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

(3) Unless otherwise provided in the LLC agreement, the manager of 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.

(5) If—

(a) a request made by a member or manager under this section is refused or not complied with; or

(b) a manager of a LLC acts in breach of subsection (3);

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

Form of records

26. 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.

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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 share in the profits of the LLC regardless whether or not the economic interest of a member may have been previously conveyed to another, members owning more than 50% of that percentage share or other interest in the profits having a controlling interest.

(2) Notwithstanding subsection (1), if 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 42, 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

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

Remedies for breach

32. 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.

Reliance on reports and information by member or manager

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

PART 5

FINANCIAL MATTERS

Division 1

Contributions of members; profits and losses and related matters

Form of contribution

34. The contribution of a member to 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.

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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 that, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return.

(5) A conditional obligation of a member to make a contribution or return money or other property to 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.

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

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

Profits and losses

36. The profits and losses of 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.

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Division 2

Records of Accounts

Maintenance of proper accounting records

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

(Act 4/2021, s. 2(a))

(a) all sums of money received and expended by the LLC and the matters for which the receipt and expenditure takes place;

(b) all sales and purchases of goods and services and other related transactions for the LLC; and

(c) the assets and liabilities of the LLC.

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

(a) contain sufficient details to enable a transaction to be understood;

(b) disclose with reasonable accuracy the financial position of the LLC at any time; and

(c) be in a format that allows financial statements to be prepared and audited.

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

(3) Where no manager has been named or designated pursuant to sections 28 and 29, the members of the LLC shall be required to keep accounting records in accordance with this section.

(Act 4/2021, s. 2(b))

Period for which accounting records shall be maintained

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

(a) on which all activities taking place in the course of the transaction in question were completed; or

(b) of the ending of the business relationship for whose formation the record was compiled.

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

Offences and Penalties

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

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

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PART 6

DISTRIBUTION AND RESIGNATION

Interim distribution

41. Except as provided in this Part, to the extent and at the times or upon the happening of the events specified in 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

42. (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 members

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

(4) Notwithstanding the provisions of 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

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

Distribution in kind

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

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

Right to distribution

46. (1) Subject to sections 47 and 60, 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.

Limitation on distribution

47. (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.

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

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

PART 7

ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

Nature of interest

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

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

Assignment of interest

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

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

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

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(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 encumbrance in or against any or all of the economic interests of a member does not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(5) 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 that were improperly made.

Right of judgment creditor

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

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

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

Right of assignee to become member

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

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

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

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

(3) Notwithstanding subsection (2), and subject to subsection (4), unless otherwise provided in a LLC agreement, an assignee who becomes a member assumes the obligations of his assignor to make contributions as provided in section 35, but is not liable for the obligations of his assignor under Part 6.

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

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

Estate of deceased or incompetent member

52. (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 member's executor, administrator, guardian, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power under 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

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

Dissolution and winding up by the Court

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

(a) the LLC carries on business in breach of section 8;

(b) the LLC carries on business without a member;

(c) the LLC has seriously or persistently failed to comply with this Act;

(d) the LLC is unable to pay its debts;

(e) the Court considers that it would be just and equitable for the LLC to be dissolved and wound up; or

(f) the Court considers that it is not reasonably practicable for the business to be carried on in conformity with the agreement.

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

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

(b) by an interested person upon the grounds set out in paragraph (1)(c), (d) or (e); or

(c) by a member or manager upon the grounds set out in paragraph (1)(f).

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(3) Unless the Court otherwise orders, where the Court makes an order under this section, the provisions of the Business Companies Act shall apply as if the LLC were a company being liquidated and dissolved by the Court under section 229(1) of that Act.

Winding up

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

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

Notice to the Registrar

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

(a) an order for judicial dissolution under section 54, by the applicant for the order;

(b) the winding up of a LLC under section 55, by the person carrying out the winding up;

(c) an order for the winding up by the Court of a LLC under section 55, by the applicant for the order; and

(d) the appointment of a liquidator under section 55, by the liquidator;

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

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

Register to be filed with Registrar on liquidation, dissolution or winding up of LLC

57. Where—

(a) an application to liquidate or dissolve a LLC is made under section 54; or

(b) a LLC is being wound up under section 55;

the manager, or where there is no manager a member of the LLC, shall file a copy of the register of members and managers referred to in section 5(2) with the Registrar, providing up-to-date details of the members and managers at the time when the LLC is being liquidated, dissolved or wound up.

(Act 4/2021, s. 3)

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Dissolution of LLC with no property or liabilities

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

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

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

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

Dissolved LLC to be struck from the Register

59. The Registrar shall upon the conclusion of the dissolution and winding up of a LLC under this Part strike the LLC off the Register.

Distribution of assets

60. (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 41;

(b) unless otherwise provided in the agreement, to members and former members in satisfaction of liabilities for distributions under section 41 or 44; and

(c) unless otherwise provided in the agreement, to members first for the return of their contributions and second respecting their economic interests, in the proportions in which the members share in distributions.

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

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

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

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

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

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Striking LLC from Register and dissolution

61. (1) The Registrar may strike a LLC from the Register if—

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

(b) the LLC carries on a relevant activity and fails to satisfy the Registrar, through filed information, that it either—

(i) meets the economic substance test for each relevant activity carried on by it, or

(ii) is an exempt LLC; or

(Act 2/2019, s. 3(b))

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

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

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

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

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

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

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

(6) Where a LLC is struck off the Register and dissolved, an interested person may make an application to revive the LLC in accordance with Part 9.

(Act 4/2021, s. 4)

(7) For the purposes of subsection (1)(b)—

(a) "filed information", "the economic substance test" and "relevant activity" have the respective meanings given by section 88(5);

(b) "exempt LLC" has the meaning given in section 1 of the Limited Liability Company (Economic Substance) Regulations.

(Act 2/2019, s. 3(c))

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Effect of striking off

62. (1) Where a LLC has been struck off the Register, neither the LLC nor any director, members, manager, liquidator or receiver of the LLC, may—

(a) commence legal proceedings, carry on any business or in any way deal with the assets of the LLC;

(b) defend any legal proceedings commenced after the date the LLC is struck off the Register;

(c) make any claim or claim any right for, or in the name of, the LLC; or

(d) act in any way with respect to the affairs of the LLC.

(2) Notwithstanding subsection (1), where a LLC has been struck off the Register, the LLC or a director, member, manager, liquidator or receiver of the company, may—

(a) make application for the revival of the LLC and the restoration of the name of the LLC to the Register;

(b) continue to defend proceedings that were commenced against the LLC prior to the date of the striking-off; and

(c) continue to carry on legal proceedings that were instituted on behalf of the LLC prior to the date of striking-off.

(3) The fact that a LLC is struck off the Register does not prevent—

(a) the LLC from incurring liabilities;

(b) any creditor from making a claim against the LLC and pursuing the claim through to judgment or execution; or

(c) the appointment by the Court of an official liquidator for the LLC under section 55(1).

(Act 4/2021, s. 5)

Property of LLC struck off Register

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

(2) When a LLC is revived under section 68, any property (other than money) that was vested in the Crown under subsection (1) on the dissolution of the LLC and that has not been disposed of must be returned to the LLC upon its restoration to the Register.

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

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

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

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

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

Retention of accounting records after company is struck, dissolved or wound up

64. (1) Subject to subsections (2) and (3) where a LLC is struck under this Act, the manager or member shall retain the accounting records referred to in section 38 for a period of at least 6 years from the date on which the company was struck, dissolved or wound up.

(2) Where a manager has been named or designated pursuant to sections 28 and 29, the person who was the manager at the time when the company was struck shall retain the records in accordance with subsection (1).

(3) Where no manager has been named or designated, the members of the LLC at the time when the company was struck shall retain the records in accordance with subsection (1).

(4) Where a LLC is wound up and dissolved under this Act, the liquidator appointed under section 55 shall retain the accounting records referred to in section 38 for a period of at least 6 years from the date on which the company was dissolved.

(5) A person who fails to comply with this section commits an offence.

(Act 4/2021, s. 6)

Retention of register after company is struck, dissolved or wound up

65. (1) Subject to subsections (2) and (3), where a LLC is struck under this Act, the manager or member shall retain the register of members and managers referred to in section 5(2) for a period of at least 6 years from the date on which the company was struck, dissolved or wound up.

(2) Where a manager has been named or designated pursuant to sections 28 and 29, the person who was the manager at the time when the company was struck shall retain the register of members and managers in accordance with subsection (1).

(3) Where no manager has been named or designated, the members of the LLC at the time when the company was struck shall retain the register of members and managers referred to in section 5(2) in accordance with subsection (1).

(4) Where a LLC is wound up and dissolved under this Act, the liquidator appointed under section 55 shall retain the register of members and managers referred to in section 5(2) for a period of at least 6 years from the date on which the company was dissolved.

(5) A person who fails to comply with this section commits an offence.

(Act 4/2021, s. 6)

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Court appointed custodian to retain records and register

66. (1) Notwithstanding sections 64 and 65, the Court may appoint a custodian to retain accounting records and the register of members and managers referred to in section 5(2) for such period of time, not being less than 6 years, as the Court sees fit.

(2) For the purpose of subsection (1) a custodian includes a person referred to in section 64 or such other person the Court deems fit.

(3) A person who fails to comply with an order of the Court under subsection (1) commits an offence.

(Act 4/2021, s. 6)

Disclaimer of property by the Crown

67. (1) In this section, "onerous property" means—

(a) an unprofitable contract; or

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

(2) Subject to subsection (3), the Minister may, by notice in writing published in the *Gazette*, disclaim the Crown's title to onerous property that vests in the Crown under section 63.

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

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

(a) within 12 months of the date upon which the vesting of the property under section 63 came to the notice of the Minister; or

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

whichever occurs first.

(5) Property disclaimed by the Minister under this section is deemed not to have vested in the Crown under section 63.

(6) A disclaimer under this section—

(a) operates so as to determine, with effect from immediately prior to the dissolution of the LLC, the rights, interests and liabilities of the LLC in or in respect of the property disclaimed; and

(b) does not, except so far as is necessary to release the LLC from liability, affect the rights or liabilities of any other person.

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

(a) shall be treated as a creditor of the LLC for the amount of the loss or damage, taking into account the effect of any order made by the Court under subsection (8); and

(b) may apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

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

PART 9

REVIVAL OF LLC

Revival of LLC and Restoration to the Register

68. (1) Where a LLC is struck off the Register, an interested person may make an application in the prescribed form to revive the LLC.

(2) A person making an application under subsection (1) shall pay the prescribed fee and any outstanding fees that may be owed by the LLC pursuant to this Act or any other Act.

(3) Where an application is made under subsection (1), the interested person making the application shall produce a copy of the register referred to in section 5(2) providing details of members and managers at the time when the application to revive the LLC is made.

(4) An application to revive a LLC must be made within 20 years after the date of the notice published in the *Gazette* under section 61(5).

(5) Where an application is made under subsection (1), the Registrar may—

(a) grant the application and revive the LLC and issue a certificate in a form adapted to the circumstances; or

(b) deny the application to revive the LLC.

(6) A member or manager, a creditor, or a liquidator of the LLC may, within 90 days, appeal to the Court from a refusal of the Registrar to restore the LLC to the Register and, if satisfied that it would be just for the LLC to be restored to the Register, the Court may direct the Registrar to do so upon such terms and conditions as it may consider appropriate.

(7) Notice of an appeal to the Judge in Chambers under subsection (6) must be served on the Registrar, who shall be entitled to appear and be heard at the hearing of the appeal.

(Act 4/2021, s. 7)

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PART 10

CONTINUATION

Definitions

69. In this Part—

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

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

Continuation

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

Application to continue

71. Any foreign LLC may continue as a LLC under this Act by filing with the Registrar an application that must be executed in accordance with section 74 and filed and recorded in accordance with section 11.

Contents of application

72. The application must contain—

(a) the date on which and the jurisdiction in which the LLC was formed, created or otherwise came into existence;

(b) the name of the LLC;

(c) the foreign jurisdiction that constitutes the domicile;

(d) a declaration that the continuation has been approved by all necessary company action;

(e) a declaration that the continuation is made in good faith and will not serve to hinder, delay or defraud existing members, creditors, claimants or other parties in interest;

(f) the name and address of the LLC's registered office and agent in Anguilla;

(g) any other information required to be specified in the articles of formation under section 11; and

(h) the amendments of its articles of formation or its equivalent that are to be effective upon filing the application.

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Documentation to be submitted

73. The application to continue shall be submitted to the Registrar and must be accompanied by—

(a) a certificate evidencing the existence of the foreign LLC issued by an authorised officer of the foreign domicile; and

(b) a certified copy of the certificate of formation, with amendments, if any, and if the documents are not in English, a certified translation thereof.

Who may execute application

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

Certificate of continuation

75. (1) Upon the filing of the application to continue and the documents referred to in sections 72 and 73 together with the payment of the prescribed fees, the Registrar shall, upon being satisfied that the other requirements of this Act are complied with, deliver to the LLC a certificate of continuation and the company shall become domiciled and domesticated in Anguilla as a LLC of Anguilla and shall thereafter be subject to this Act.

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

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

Prior liabilities

76. The continuation of a LLC under this Act does not affect any liabilities of the company incurred prior to the continuation.

Applicable law

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

Departure to foreign jurisdiction

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

Certificate of departure

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

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Effective date of departure

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

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

Continuation under Companies Act or International Business Companies Act

81. (1) A LLC may continue—

(a) as a company incorporated under the Companies Act[‡] in accordance with the provisions of that Act; or

(b) as an international business company in accordance with the provisions of the International Business Companies Act[§].

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

PART 11

DERIVATIVE ACTIONS

Right to bring actions

82. 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

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

Complaint

84. 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.

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‡ Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

§ Business Companies Act, 2022 (Act 2/2022) *repealed* the International Business Companies Act, R.S.A. c. I20.

** Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

†† Business Companies Act, 2022 (Act 2/2022) *repealed* the International Business Companies Act, R.S.A. c. I20.

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Expenses

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

PART 12

EXEMPTIONS FROM TAX AND FROM REGISTRATION OF DOCUMENTS

Exemptions from tax and from registration of documents

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

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

(a) maintaining bank accounts in Anguilla;

(b) holding meetings of managers or members in Anguilla;

(c) maintaining company or financial records in Anguilla;

(d) maintaining an administrative or managerial office in Anguilla with respect to assets or activities outside of Anguilla;

(e) maintaining a registered agent in Anguilla; and

(f) investing in stocks or entities of Anguilla companies or being a partner in an Anguilla partnership or a beneficiary of an Anguilla trust or estate.

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

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

(a) an instrument relating to a transfer of property to or by a LLC; and

(b) an instrument relating to transactions in respect of an interest in or debt obligation of a LLC.

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(5) Subsection (4) does not apply—

(a) to an instrument relating to a transfer of property located in Anguilla, including any interest in land in Anguilla and in shares in a company incorporated under the Companies Act[‡‡]; or

(b) to any transaction where the LLC concerned is, or at the time of the transaction was, in breach of section 8(2)(d).

Exemptions for dividends and distributions

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

PART 13

ECONOMIC SUBSTANCE REQUIREMENTS

Purpose and operation of this Part

88. (1) The purpose of this Part is to require—

(a) any LLC carrying on a relevant activity to satisfy the Registrar annually that the LLC meets the economic substance test in relation to the relevant activity; and

(b) mandatory reporting of information for the purposes of the Multilateral Convention on Mutual Administrative Assistance on Tax Matters.

(2) Subsection (1)(a) does not apply to an exempt LLC.

(3) Subject to any regulations made for the purposes of this Part, the Registrar may by notice published in the *Gazette* issue guidance on how the Registrar intends to determine whether a LLC meets the economic substance test in relation to any relevant activity.

(4) The Registrar may delegate in writing to a specified person or authority all or any of his functions under this Part.

(5) In this Part—

"calendar quarter" means one of the following periods—

(a) 1 January to 31 March;

(b) 1 April to 30 June;

(c) 1 July to 30 September;

‡‡ Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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(d) 1 October to 31 December;

"compliant", in relation to a LLC, means that the LLC is not, or is no longer, non-compliant;

"economic substance return" means a return required to be filed under section 90;

"economic substance test", in relation to a relevant activity, means the test prescribed as the economic substance test for the relevant activity;

"filed information", in relation to a LLC, means any economic substance return or other information or evidence filed by the LLC with the Registrar;

"intellectual property asset" includes any copyright, design right, trademark, patent or similar asset, including any utility model or any right given for plant breeders and genetic material;

"non-compliant" has the meaning specified in section 91(2);

"relevant activity" means an activity specified in Schedule 2;

"relevant quarter", in relation to any LLC, means the calendar quarter in which the anniversary of the formation or continuance under this Act of the LLC falls;

"relevant year", in relation to any LLC, means the year immediately preceding the 1st day of the relevant quarter for the LLC.

(Act 2/2019, s. 4)

Meaning of information subject to legal professional privilege

89. For the purposes of this Part, information is subject to legal professional privilege where the information would reveal confidential communications between a client and his legal representative, where the communication is produced for the purpose of—

(a) seeking or providing legal advice; or

(b) use in existing or contemplated legal proceedings;

but legal professional privilege does not apply to any information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(Act 2/2019, s. 4)

Economic substance returns

90. (1) A LLC shall make up and file with the Registrar a return for each relevant year in accordance with this section.

(2) The return shall—

(a) be made up to the first day of the relevant quarter;

(b) be filed in the prescribed manner with the Registrar no later than the last day of the relevant quarter;

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(c) include the prescribed information and be in the prescribed form; and

(d) be certified as correct by a director, officer, registered agent or liquidator of the LLC.

(3) Without limiting the generality of subsection (2)(c), regulations made for the purposes of that provision may require the LLC to provide sufficient information in the return to enable the Registrar—

(a) to identify the type of activities carried on by the LLC;

(b) to determine whether the LLC is carrying on a relevant activity; and

(c) if the LLC is carrying on a relevant activity—

(i) to determine the nature of the relevant activity; and

(ii) unless the LLC is an exempt LLC, to determine whether or not the LLC meets the economic substance test in relation to the relevant activity.

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

(Act 2/2019, s. 4)

Registrar may require further information or evidence to remedy non-compliance

91. (1) This section applies where, in the opinion of the Registrar, a LLC is non-compliant.

(2) A LLC is non-compliant if—

(a) it does not meet the economic substance test in relation to each relevant activity that it carries on; or

(b) it is in contravention of section 90(1).

(3) Subsection (2)(a) does not apply to an exempt LLC.

(4) Where this section applies, the Registrar may, by giving the LLC notice in writing, require it to file with the Registrar, within a period specified in the notice, an economic substance return, a revised economic substance return or any further information or evidence described in the notice in order to rectify or remedy the non-compliance.

(5) The period specified in a notice shall be not less than 7 days and not more than 30 days from the date of issue of the notice.

(6) A LLC given a notice shall file with the Registrar the return, further information or evidence required by the notice within the period specified in that notice.

(7) A notice—

(a) has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise; but

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(b) does not require any LLC to file with the Registrar any information subject to legal professional privilege.

(Act 2/2019, s. 4)

Financial penalties for continuing non-compliance

92. (1) This section applies where a LLC given a notice under section 91(4)—

(a) fails to file with the Registrar the return, further information or evidence required by the notice within the period specified in it; or

(b) despite filing the return, further information or evidence required by the notice, fails to satisfy the Registrar that the LLC is compliant.

(2) Subject to subsections (4) and (5), where the LLC is or continues to be non-compliant under section 91(2)(a), the Registrar shall order the LLC to pay to the Registrar a civil penalty consisting of—

(a) a fine of not less than $1,000 and not more than $25,000, in respect of the first relevant year to which the non-compliance relates; and

(b) thereafter, a fine of not less than $5,000 and not more than $100,000, in respect of each subsequent relevant year to which the non-compliance relates.

(3) Subject to subsections (4) and (5), where the LLC is or continues to be non-compliant under section 91(2)(b), the Registrar shall order the LLC to pay to the Registrar a civil penalty consisting of—

(a) a fine of not less than $500 and not more than $2,500, in respect of the first relevant year to which non-compliance relates; and

(b) thereafter, a fine of not less than $1,000 and not more than $5,000, in respect of any other relevant year to which of the non-compliance relates.

(4) Where the Registrar intends to order a LLC to pay a penalty in accordance with subsection (2) or (3), the Registrar shall give the LLC notice of his intention, and a reasonable opportunity to do either or both of the following—

(a) satisfy the Registrar that the LLC is compliant; or

(b) show cause why the LLC should be fined an amount that is less than the proposed fine.

(5) After the expiration of the time specified in a notice the Registrar shall, unless the LLC satisfies the Registrar that it is compliant, issue a written order to the LLC to pay a civil penalty consisting of the proposed fine or a fine of any other amount the Registrar considers appropriate in accordance with subsection (2) or (3).

(6) Subject to section 94, a LLC to which an order is issued shall pay the penalty specified in the order within 30 days of the date on which the order was issued.

(7) For the purposes of section 108, an order shall be regarded as a demand for payment made by the Registrar.

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(8) For the avoidance of doubt, nothing in this section limits or restricts the power of the Registrar to strike off a LLC under section 61.

(Act 2/2019, s. 4)

Mandatory information sharing

93. (1) This section applies to a LLC if, in respect of any relevant year—

(a) section 92 applies in relation to the LLC in accordance with section 92(1);

(b) in the opinion of the Registrar, the LLC was a high-risk intellectual property entity; or

(c) in the opinion of the Registrar, the LLC carried on a relevant activity, and the LLC claims, through filed information, that it was an exempt LLC.

(2) Where this section applies to a LLC, the Registrar shall promptly deliver to the competent authority of Anguilla the following information relating to the LLC—

(a) the name of that LLC;

(b) a statement of which of subsection (1)(a), (b) or (c) applies, and why the Registrar believes it applies;

(c) any inculpatory information for the relevant year;

(d) any other filed information that the Registrar considers relevant to the LLC's tax matters for the relevant year; and

(e) any other prescribed information.

(3) Upon receiving that information, the competent authority of Anguilla shall promptly forward it to the competent authority of each tax-concerned Member State.

(4) Nothing in this section requires either the Registrar or the competent authority of Anguilla to deliver or forward to any person any information subject to legal professional privilege.

(5) In this section—

"beneficial owner" has the meaning specified in section 2 of the Anti-Money Laundering and Terrorist Financing Regulations;

"competent authority" has the meaning specified in section 1(1) of the Tax Information Exchange (International Co-operation) Act;

"high-risk intellectual property entity" means a LLC that—

(a) acquired an intellectual property asset—

(i) from an affiliated entity; or

(ii) in consideration for funding research and development by another person situated in a country or territory other than Anguilla; and

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(b) licenses the intellectual property asset to an affiliated entity, or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by an affiliated entity;

"inculpatory information" means any information or evidence filed by the LLC with the Registrar, the knowledge of which, in the Registrar's opinion, might trigger Anguilla's obligation to forward that information or evidence to another Party under Article 7 of the Multilateral Convention on Mutual Administrative Assistance on Tax Matters; and

"tax-concerned Member State" means any Member State of the European Union in which any of the following is known to be resident for tax purposes—

(a) a holding body of the LLC;

(b) an ultimate holding body of the LLC; or

(c) a beneficial owner of the LLC.

(6) An entity is an affiliated entity in relation to another entity if—

(a) one of them is the subsidiary of the other;

(b) both are subsidiaries of the same entity;

(c) each of them is controlled by the same entity; or

(d) they are both affiliated (within the meaning of paragraph (a), (b) or (c)) with the same entity at the same time.

(7) An entity is the holding body of another entity if the latter-mentioned entity is a subsidiary of the first-mentioned entity.

(8) An entity is a subsidiary of another entity if the first-mentioned entity is controlled by the later-mentioned entity.

(9) An entity is controlled by another entity if, for example, any shares of the first-mentioned entity carrying voting rights sufficient to elect a majority of its directors are, except by way of security only, held directly or indirectly by or on behalf of the latter-mentioned entity.

(Act 2/2019, s. 4)

Appeals against penalties

94. (1) A LLC to which an order under section 92(5) is issued may appeal the order to a Judge in Chambers within 90 days of the date on which the order was issued.

(2) Notice of an appeal to the Judge in Chambers under subsection (1) must be served on the Registrar, who shall be entitled to appear and be heard at the hearing of the appeal.

(3) The Registrar may, pending an appeal under subsection (1), suspend the operation of the order upon any terms he considers appropriate pending the determination of the appeal.

(Act 2/2019, s. 4)

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PART 14

INVESTIGATION OF LLCs

Definition

95. In this Part, "inspector" means an inspector appointed by an order under section 96(2).

Investigation order

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

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

(a) the business of the LLC or any of its affiliates is or has been carried on with intent to defraud any person;

(b) the LLC or any of its affiliates was formed for a fraudulent or unlawful purpose, or is to be dissolved for a fraudulent or unlawful purpose; or

(c) persons concerned with the formation, business or affairs of the LLC or any of its affiliates have in connection therewith acted fraudulently or dishonestly;

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

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

Contents of order

97. (1) An order under section 96(2) shall include an order to investigate and an order appointing an inspector, who may be the Registrar, and fixing his remuneration and may include—

(a) an order replacing an inspector;

(b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(c) an order authorising an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records found on the premises;

(d) an order requiring any person to produce documents or records to the inspector;

(e) an order authorising an inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and establishing rules for the conduct of the hearing;

(f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath or affirmation;

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(g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

(h) an order requiring an inspector to make an interim or final report to the Court;

(i) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and

(j) an order requiring an inspector to discontinue an investigation.

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

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

Inspector's powers

98. An inspector under this Part—

(a) has the powers set out in the order appointing him; and

(b) shall upon request produce to an interested person a copy of the order.

Hearing *in camera*

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

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

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

Incriminating evidence

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

Privilege absolute

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

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PART 15

MISCELLANEOUS

Economic substance records to be kept

102. (1) A LLC required under Part 13 to satisfy the Registrar that it meets the economic substance test with respect to any relevant year shall retain, at the registered office of the LLC for six years after the end of the relevant year, any book, document or other record, including any information stored by electronic means, that relates to the economic substance return or any further information or evidence required to be provided to the Registrar under Part 13.

(2) A LLC that contravenes subsection (1) commits an offence.

(Act 2/2019, s. 5)

Confidentiality

103. (1) Except in so far as may be necessary for the due performance of his functions under Part 13 or any other provision of this Act, the Registrar and any officer or other person acting as an officer, a servant, an agent or an adviser of the Registrar shall preserve and aid in preserving confidentiality with regard to all matters relating to information or documents that may come to his knowledge in the course of the performance of his duties under this Act.

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

(Act 2/2019, s. 5)

Immunity

104. No liability attaches to the Registrar, the competent authority of Anguilla (within the meaning specified in section 93(5)), or any person acting under the authority of either for any act done in good faith in the discharge of the functions under this Act of the Registrar or, as the case may be, the competent authority.

(Act 2/2019, s. 5)

Service of process

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

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

(a) was mailed in such time as to admit to its being delivered in the normal course of delivery, within the period prescribed for service; and

(b) was correctly addressed and the postage was prepaid.

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Regulations

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

(a) prescribing any matter required or authorised by this Act to be prescribed;

(b) requiring the payment of a fee in respect of the filing, examination or copying of any documents or in respect of any action that the Registrar is required or authorised to take under this Act or the payment of a penalty in respect of the late filing of any document, and prescribing the amount thereof;

(c) prescribing the contents of returns, notices or other documents required to be filed with the Registrar or to be issued by him;

(d) prescribing the rules with respect to exemptions permitted by this Act;

(e) respecting the names of companies or classes thereof;

(f) prescribing that specified companies be exempt from certain provisions of this Act;

(g) providing for such savings, transitional and consequential provisions as the Governor may consider necessary or expedient to have effect in connection with the coming into operation of any provision of this Act or the regulations;
(Act 2/2019, s. 6)

(h) respecting any other matter required for the efficient administration of this Act; and

(i) respecting the conduct, duties and responsibilities of registered agents.

Construction and application

107. 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 LLC or to any such other member or manager for the member's or manager's reliance in good faith on the provisions of the LLC agreement; and

(b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a LLC agreement.

Recovery of penalties

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

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LLC dissolved by Registrar liable for fees and penalties

109. (1) A LLC formed under this Act continues to be liable for all fees and penalties payable under this Act notwithstanding that the LLC has been dissolved by the Registrar under section 61 and those fees and penalties have priority over all other claims against the assets of the company.

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

Consolidated Fund

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

Reports

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

(a) that is required by this Act or the regulations to be filed with the Registrar or to be sent to any other person; and

(b) that—

(i) contains an untrue statement of a material fact, or

(ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made,

commits an offence.

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

Punishment of offences

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

(a) if an individual, to the penalty set out opposite the offence in Column 4 of Schedule 1; or

(b) if not an individual, to the penalty set out opposite the offence in Column 3 of Schedule 1;

and, in either case, to the daily default fine (if any) set out opposite the offence in Column 5 of Schedule 1 for each day during which the default continues.

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

(a) if an individual, to the penalty set out opposite the offence in Column 4 of Schedule 1; or

(b) if not an individual, to the penalty set out opposite the offence in Column 3 of Schedule 1;

and, in either case, to the daily default fine (if any) set out opposite the offence in Column 5 of Schedule 1 for each day during which the default continues.

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

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

General offences

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

Order to comply

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

Limitation

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

Civil remedies unaffected

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

Citation

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

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SCHEDULE 1

(Section 96)

OFFENCES AND PENALTIES

COLUMN 1 Section of Act creating offence	COLUMN 2 General nature of offence	COLUMN 3 Penalty (corporate body)	COLUMN 4 Penalty (individual)	COLUMN 5 Daily default fine
4(4)	LLC using a name that has been changed by the Registrar	$25,000	$25,000, imprisonment for 6 months or both	$50
5(7)	LLC failing to change registered office	$10,000	$10,000	$50
6(7)	LLC failing to change registered agent	$10,000	$10,000	$50
7(7)	Registered agent failing to file copy of notice of intention to cease to act with Registrar	$10,000	$10,000	$50
8(5)*	LLC carrying on prohibited business or activity	$25,000	$25,000, imprisonment for 6 months or both	
47(4)*	LLC making a distribution resulting in its liabilities exceeding the fair value of its assets	$25,000	$25,000, imprisonment for 6 months or both	
56(2)	Person failing to give Registrar notice of matters specified in section 56(1)	$5,000	$5,000	$50
111(1)	Person making an untrue or misleading report, return, etc.	$25,000	$25,000, imprisonment for one year or both	

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SCHEDULE 2

(Section 88(5))

RELEVANT ACTIVITIES

Each of the following is a relevant activity for the purposes of Part 13—

1. Banking

A "banking business" as defined in the Banking Act and in the Trust Companies and Offshore Banking Act.

2. Insurance

An "insurance business" as defined in the Insurance Act.

3. Fund management

A business earning income from providing management services (including making decisions on investments) to an investment fund or its investors.

4. Financing and leasing

A business earning income from providing credit facilities for any kind of consideration to another person but does not include financial leasing of land or an interest in land, a banking business, an insurance business or a fund management business.

5. Distribution and service centre

A business earning income from—

(a) purchasing raw materials and finished products from other group members and reselling these; or

(b) providing services to other entities of the same group, for example transporting and storing goods, managing stocks, taking orders, or providing consulting or other administrative services.

6. Shipping

A business earning income from shipping activities, for example—

(a) managing the crew (including hiring, paying or overseeing crew members);

(b) hauling and maintaining ships;

(c) overseeing and tracking deliveries;

(d) determining what goods to order and when to deliver them; or

(e) organising and overseeing voyages.

7. Intellectual property business

A business earning income from intellectual property assets, including royalties and income from the sale of an intellectual property asset.

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8. Headquarters

A business earning income from providing services such as managing, coordinating or controlling business activities for a group with which it is affiliated, whether for the group as a whole or for members of the group in a specific geographical area, for example—

(a) taking relevant management decisions;

(b) incurring expenditures on behalf of group entities; or

(c) co-ordinating group activities.

9. Holding company

A business holding equity participation from which dividends or capital gains are earned.

(Act 2/2019, s. 7)

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