

2012 No. XXXX

LIMITED LIABILITY PARTNERSHIPS

The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2012

<i>Made</i>	- - - -	2012
<i>Laid</i>		***
<i>Coming into force</i>	- -	6th April 2013

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 15 and 17 of the Limited Liability Partnerships Act 2000(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2012 and come into force on 6th April 2013.

(2) “The principal Regulations” means the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009(b).

Substituted Part 9 of principal Regulations

2. The provisions of the Schedule to these Regulations are substituted for the provisions of Part 9 of the principal Regulations.

Transitional provisions

3.—(1) Subject to paragraph (3) the provisions set out in the Schedule to these Regulations apply to charges created on or after the date of commencement of these Regulations.

(2) Subject to paragraph (3), the provisions of Part 9 of the principal Regulations as they stood immediately before the commencement of these Regulations shall continue to apply in respect of any charge which was created before the date of commencement of these Regulations.

(3) The provisions set out in the Schedule to these Regulations apply to charges created before the date of commencement of these Regulations for the purposes of sections 859J(2)(b), 859K(2)(b)(i), 859K(3)(b)(i), 859L(4)(c) and 859O(3)(b) as set out in the Schedule.

	<i>Name</i>
Parliamentary Under Secretary of State for Employment Relations, Consumer and Postal Affairs	
Date	Department for Business, Innovation and Skills

(a) 2000 c.12.
(b) S.I. 2009/1804.

SCHEDULE

“LLP CHARGES

Registration of charges

32. Sections 859A to 859Q apply to LLPs, modified so that they read as follows—

“Charges created by an LLP

859A.—(1) This section applies, subject to subsection (6), where an LLP creates a charge.

(2) The registrar may register the charge if, before the end of the period allowed for delivery, the LLP or any person interested in the charge delivers to the registrar for registration a statement of particulars complying with section 859D.

(3) Where the charge is created or evidenced by an instrument, the registrar has power to register it only if a certified copy of the instrument is delivered to the registrar with the statement of particulars.

(4) “The period allowed for delivery” is 21 days beginning with the day after the date of creation of the charge (see section 859E), unless an order allowing an extended period is made under section 859F.

(5) Where an order is made under section 859F the copy of the order referred to under section 859F (3) must be delivered to the registrar with the statement of particulars.

(6) This section does not apply to a charge if it is—

- (a) cash taken or held by a landlord as security for the due performance and observance of a tenant’s obligations under a lease of land;
- (b) a charge created by a member of Lloyd’s (within the meaning of the Lloyd’s Act 1982^(a)) to secure its obligations in connection with its underwriting business at Lloyd’s;
- (c) a pledge or lien of or over property;
- (d) a charge excluded from the application of this section by or under any other Act.

(7) In this Part—

“charge” includes—

- (a) a mortgage;
- (b) a standard security, assignation in security, and any other right in security constituted under the law of Scotland, including any heritable property;

“LLP” means an LLP registered in England and Wales or in Northern Ireland or in Scotland.

(a) 1982 c.14.

Charge in series of debentures

859B.—(1) This section applies where—

- (a) an LLP creates a series of debentures containing a charge, or giving a charge by reference to another instrument, and
- (b) debenture holders of that series are entitled to the benefit of the charge *pari passu*.

(2) The registrar may register the charge if, before the end of the period allowed for delivery, the LLP or any person interested in the charge delivers to the registrar for registration, a statement of particulars complying with section 859D and also containing the following—

- (a) either—
 - (i) the names of each of the trustees for the debenture holders, or
 - (ii) where there are more than four such persons, the names of any four persons listed in the charge instrument as trustees for the debenture holders, and a statement that there are other such persons;
- (b) the dates of the determinations of the LLP authorising the issue of the series;
- (c) the date of the covering instrument (if any) by which the series is created or defined.

(3) Where the charge is created or evidenced by an instrument, the registrar has power to register it only if a certified copy of the instrument is delivered to the registrar with the statement of particulars.

(4) Where the charge is not created or evidenced by an instrument, the registrar has power to register it only if a certified copy of one of the debentures in the series is delivered to the registrar with the statement of particulars.

(5) A statement of particulars is taken to comply with section 859D for the purposes of this section even if it does not contain the names of the debenture holders.

(6) “The period allowed for delivery” is—

- (a) if there is a deed containing the charge, 21 days beginning with the day after the date on which the deed is executed;
- (b) if there is no deed containing the charge, 21 days beginning with the day after the date on which the first debenture of the series is executed.

(7) Where an order is made under section 859F the copy of the order referred to under section 859F(3) must be delivered to the registrar with the statement of particulars.

(8) In this section “deed” means—

- (a) a deed governed by the law of England and Wales or Northern Ireland, or
- (b) an instrument governed by a law other than the law of England and Wales or Northern Ireland which requires delivery under that law in order to take effect.

Charges existing on property or undertaking acquired

859C.—(1) This section applies where an LLP acquires property or undertaking which is subject to a charge of a kind which would, if it had been created by the LLP after the acquisition of the property or undertaking, have been capable of being registered under section 859A.

(2) The registrar may register the charge if the LLP or any person interested in the charge delivers to the registrar for registration a statement of particulars complying with section 859D.

(3) Where the charge is created or evidenced by an instrument, the registrar has power to register it only if a certified copy of the instrument is delivered to the registrar with the statement of particulars.

Particulars to be delivered to registrar

859D.—(1) A statement of particulars relating to a charge created by an LLP complies with this section if it contains the following particulars—

- (a) the registered name and number of the LLP;
- (b) the date of creation of the charge and (if the charge is one to which section 859C applies) the date of acquisition of the property or undertaking concerned;
- (c) where the charge is created or evidenced by an instrument, the particulars listed in subsection (2);
- (d) where the charge is not created or evidenced by an instrument, the particulars listed in subsection (3).

(2) The particulars referred to in subsection (1)(c) are—

- (a) any of the following—
 - (i) the names of each of the persons in whose favour the charge has been created or of the security agents or trustees holding the charge for the benefit of one or more persons; or,
 - (ii) where there are more than four such persons, security agents or trustees, the names of any four such persons, security agents or trustees listed in the charge instrument, and a statement that there are other such persons, security agents or trustees;
- (b) whether the charge is expressed to be a floating charge and, if so, whether it is expressed to cover all the property and undertaking of the LLP;
- (c) whether any of the terms of the charge prohibit or restrict the LLP from creating any further security that will rank equally with or ahead of the charge;
- (d) whether (and if so, a short description of) any land, ship, aircraft or intellectual property, that is registered or required to be registered in the United Kingdom, is subject to a charge (which is not a floating charge) or fixed security included in the instrument;
- (e) whether the instrument includes a charge (which is not a floating charge) or fixed security over—
 - (i) any tangible or corporeal property, or
 - (ii) any intangible or incorporeal property, not described in paragraph (d).

(3) The particulars referred to in subsection (1)(d) are—

- (a) a statement that there is no instrument creating or evidencing the charge;
- (b) the names of all the persons in whose favour the charge has been created or the names of any security agents or trustees holding the charge for the benefit of one or more persons;
- (c) the nature of the charge;
- (d) a short description of the property or undertaking charged;
- (e) the obligations secured by the charge.

(4) In this section “fixed security” has the meaning given in section 486(1) of the Companies Act 1985.

(5) In this section “intellectual property” includes—

- (a) any patent, trade mark, registered design, copyright or design right;
- (b) any licence under or in respect of any such right.

Date of creation of charge

859E.—(1) For the purposes of this Part, a charge of the type described in column 1 of the Table below is taken to be created on the date given in relation to it in column 2 of that Table.

<i>1.Type of charge</i>	<i>2.When charge created</i>
Standard security	The date of its recording in the Register of Sasines or its registration in the Land Register of Scotland
Charge other than a standard security, where created or evidenced by an instrument	Where the instrument is a deed that has been executed and has immediate effect on execution and delivery, the date of delivery
	Where the instrument is a deed that has been executed and held in escrow, the date of delivery into escrow
	Where the instrument is a deed that has been executed and held as undelivered, the date of delivery
	Where the instrument is not a deed and has immediate effect on execution, the date of execution
	Where the instrument is not a deed and does not have immediate effect on execution, the date on which the instrument takes effect
Charge other than a standard security, where not created or evidenced by an instrument	The date on which the charge comes into effect.

(2) Where a charge is created or evidenced by an instrument made between two or more parties, references in the Table in subsection (1) to execution are to execution by all the parties to the instrument whose execution is essential for the instrument to take effect as a charge.

(3) This section applies for the purposes of this Chapter even if further forms, notices, registrations or other actions or proceedings are necessary to make the charge valid or effectual for any other purposes.

(4) For the purposes of this Chapter, the registrar is entitled without further enquiry to accept a charge as created on the date given as the date of creation of the charge in a statement of particulars complying with section 859D.

(5) In this section “deed” means—

- (a) a deed governed by the law of England and Wales or Northern Ireland, or
- (b) an instrument governed by a law other than the law of England and Wales or Northern Ireland which requires delivery under that law in order to take effect.

(6) References in this section to delivery, in relation to a deed, include delivery as a deed where required.

Extension of period allowed for delivery

859F.—(1) Subsection (2) applies if the court is satisfied that—

- (a) neither the LLP nor any other person interested in the charge has delivered to the registrar the documents required under section 859A or (as the case may be) 859B before the end of the period allowed for delivery under the section concerned, and
- (b) the requirement in subsection (2) is met.

(2) The requirement is—

- (a) that the failure to deliver those documents—
 - (i) was accidental or due to inadvertence or to some other sufficient cause, or
 - (ii) is not of a nature to prejudice the position of creditors of the LLP, or
- (b) that on other grounds it is just and equitable to grant relief.

(3) The court may, on the application of the LLP or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for delivery be extended.

Personal information etc in certified copies

859G.—(1) The following are not required to be included in a certified copy of an instrument or debenture delivered to the registrar for the purposes of any provision of this Chapter—

- (a) personal information relating to an individual (other than the name of an individual);
- (b) the number or other identifier of a bank or securities account of an LLP or individual;
- (c) a signature.

(2) The registrar is entitled without further enquiry, to accept the certified copy of an instrument whether or not any of the information in subsection (1) is contained within the instrument.

Consequence of non-delivery

Consequence of failure to deliver charges

859H.—(1) This section applies if—

- (a) an LLP creates a charge to which section 859A or 859B applies, and
- (b) the documents required by section 859A or (as the case may be) 859B are not delivered to the registrar by the LLP or another person interested in the charge before the end of the relevant period allowed for delivery.

(2) “The relevant period allowed for delivery” is—

- (a) the period allowed for delivery under the section in question, or
- (b) if an order under section 859F(3) has been made, the period allowed by the order.

(3) Where this section applies, the charge is void (so far as any security on the LLP’s property or undertaking is conferred by it) against—

- (a) a liquidator of the LLP,
- (b) an administrator of the LLP, and
- (c) a creditor of the LLP.

(4) Subsection (3) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section, the money secured by it immediately becomes payable.

The register

Entries on the register

859I.—(1) This section applies where a charge is registered in accordance with a provision of this Chapter.

(2) The registrar shall—

- (a) allocate to the charge a unique reference code and place a note in the register recording that reference code;
- (b) include in the register any documents delivered under section 859A(3) or (5), 859B(3), (4) or (7) or 859C(3).

(3) The registrar shall give to the person who delivered to the registrar a statement of particulars relating to the charge that complies with section 859D a certificate of the registration of the charge

(4) The certificate must state—

- (a) the registered name and number of the LLP in respect of which the charge was registered; and,
- (b) the unique reference code allocated to the charge.

(5) The certificate must be signed by the registrar or authenticated by the registrar's official seal.

(6) In the case of registration under section 859A or 859B, the certificate is conclusive evidence that the documents required by the section concerned were delivered to the registrar before the end of the relevant period allowed for delivery.

(7) "The relevant period allowed for delivery" is—

- (a) the period allowed for delivery under the section in question, or
- (b) if an order under section 859F(3) has been made, the period allowed by the order.

LLP holding property or undertaking as trustee

859J.—(1) Where an LLP is acting as trustee of property or undertaking which is the subject of a charge delivered for registration under this Chapter, the LLP or any person interested in the charge may deliver to the registrar a statement to that effect.

(2) A statement delivered after the delivery for registration of the charge must include—

- (a) the registered name and number of the LLP;
- (b) for a charge created before 6th April 2013—
 - (i) the date of the creation of the charge;
 - (ii) a description of the instrument (if any);
 - (iii) short particulars of the property or undertaking charged as set out when the charge was registered;
- (c) for a charge created on or after 6th April 2013, the unique reference code allocated to the charge.

Registration of enforcement of security

859K.—(1) Subsection (2) applies where a person—

- (a) obtains an order for the appointment of a receiver or manager of an LLP's property or undertaking, or
 - (b) appoints such a receiver or manager under powers contained in an instrument.
- (2) The person must, within 7 days of the order or of the appointment under those powers—
- (a) give notice to the registrar of that fact, and
 - (b) if the order was obtained, or the appointment made, by virtue of a registered charge held by the person give the registrar a notice containing—
 - (i) in the case of a charge created before 6th April 2013, the information specified in subsection (4);
 - (ii) in the case of a charge created on or after 6th April 2013, the unique reference code allocated to the charge.
- (3) Where a person appointed receiver or manager of an LLP's property or undertaking under powers contained in an instrument ceases to act as such a receiver or manager, the person must, on so ceasing—
- (a) give notice to the registrar of that fact, and—
 - (b) give the registrar a notice containing—
 - (i) in the case of a charge created before 6th April 2013, the information specified in subsection (4), or
 - (ii) in the case of a charge created on or after 6th April 2013, the unique reference code allocated to the charge.
- (4) The information referred to in subsections (2)(b)(i) and (3)(b)(i) is—
- (a) the date of the creation of the charge;
 - (b) a description of the instrument (if any) creating or evidencing the charge;
 - (c) short particulars of the property or undertaking charged.
- (5) The registrar must include in the register—
- (a) a fact of which notice is given under subsection (2)(a),
 - (b) information contained in a notice under subsection (3)(b), and
 - (c) a fact of which notice is given under subsection (3)(a).
- (6) A person who makes default in complying with the requirements of subsections (2) or (3) of this section commits an offence.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (8) This section applies only to a receiver or manager appointed—
- (a) by a court in England and Wales or Northern Ireland, or
 - (b) under an instrument governed by the law of England and Wales or Northern Ireland.
- (9) This section does not apply to a receiver appointed under Chapter 2 of Part 3 of the Insolvency Act 1986^(a).

(a) 1986 c.45.

Entries of satisfaction and release

859L.—(1) Subsection (5) applies if the statement set out in subsection (2) and the particulars set out in subsection (4) are delivered to the registrar with respect to a registered charge.

(2) The statement referred to in subsection (1) is a statement to the effect that—

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part, or
- (b) all or part of the property or undertaking charged—
 - (i) has been released from the charge, or
 - (ii) has ceased to form part of the LLP's property or undertaking.

(3) Where a statement within subsection (2)(b) relates to part only of the property or undertaking charged, the statement must include a short description of that part.

(4) The particulars referred to in subsection (1) are—

- (a) the name and address of the person delivering the statement and an indication of their interest in the charge;
- (b) the registered name and number of the LLP that—
 - (i) created the charge (in a case within section 859A or 859B), or
 - (ii) acquired the property or undertaking subject to the charge (in a case within section 859C);
- (c) in respect of a charge created before 6th April 2013—
 - (i) the date of creation of the charge;
 - (ii) a description of the instrument (if any) by which the charge is created or evidenced;
 - (iii) short particulars of the property or undertaking charged;
- (d) in respect of a charge created on or after 6th April 2013, the unique reference code allocated to the charge.

(5) The registrar may include in the register—

- (a) a statement of satisfaction in whole or in part, or
- (b) a statement of the fact that all or part of the property or undertaking has been released from the charge or has ceased to form part of the LLP's property or undertaking (as the case may be).

Rectification of register

859M.—(1) Subsection (2) applies if the court is satisfied that—

- (a) there has been an omission or mis-statement in any statement or notice delivered to the registrar in accordance with this Chapter, and
- (b) the requirement in subsection (2) is met.

(2) The requirement is that the court is satisfied—

- (a) that the omission or mis-statement—
 - (i) was accidental or due to inadvertence or to some other sufficient cause, or
 - (ii) is not of a nature to prejudice the position of creditors of the LLP, or
- (b) that on other grounds it is just and equitable to grant relief.

(3) The court may, on the application of the LLP or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the omission or mis-statement be rectified.

(4) A copy of the court's order must be sent to the registrar for registration.

Replacement of instrument or debenture

859N.—(1) Subsection (2) applies if the court is satisfied that—

- (a) a copy of an instrument or debenture delivered to the registrar under this Chapter contains material which could have been omitted under section 859G;
- (b) the wrong instrument or debenture was delivered to the registrar; or
- (c) the copy was defective.

(2) The court may, on the application of the LLP or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the copy of the instrument or debenture be removed from the register and replaced.

(3) A copy of the court's order must be sent to the registrar for registration.

Notification of negative pledge

859O.—(1) This section applies where, after the creation of a charge, the charge is amended by adding or amending a term that—

- (a) prohibits or restricts the creation of any fixed security or any other charge having priority over, or ranking *pari passu* with, the charge, or
- (b) varies, or otherwise regulates the order of, the ranking of the charge in relation to any fixed security or any other charge.

(2) Either the LLP that created the charge or the person taking the benefit of the charge (or another charge referred to in subsection (1)(b)) may deliver to the registrar for registration—

- (a) a certified copy of the instrument effecting the amendment, variation or regulation, and
- (b) a statement of the particulars set out in subsection (3).

(3) The particulars to be included in the statement are—

- (a) the registered name and number of the LLP;
- (b) in the case of a charge created before 6th April 2013—
 - (i) the date of creation of the charge;
 - (ii) a description of the instrument (if any) by which the charge was created or evidenced;
 - (iii) short particulars of the property or undertaking charged as set out when the charge was registered;
- (c) in the case of a charge created on or after 6th April 2013, (where allocated) the unique reference code allocated to the charge.

(4) Subsections (1) to (3) are without prejudice to the provisions of section 466 of the Companies Act 1985(a).

(5) In this section “fixed security” has the meaning given in section 486(1) of the Companies Act 1985.

LLPs' records and registers

LLPs to keep copies of instruments creating and amending charges

859P.—(1) An LLP must keep available for inspection a copy of every—

(a) 1985 c.6.

- (a) instrument creating a charge capable of registration under this Chapter, and
 - (b) instrument effecting any variation or amendment of such a charge.
- (2) In the case of a charge contained in a series of uniform debentures, a copy of one of the debentures of the series is sufficient for the purposes of subsection (1)(a).
- (3) If the particulars referred to in section 859D(1) or the particulars of the property or undertaking charged are not contained in the instrument creating the charge, but are instead contained in other documents which are referred to in or otherwise incorporated into the instrument, then the LLP must also keep available for inspection a copy of those other documents.
- (4) It is sufficient for the purposes of subsection (1)(a) if the LLP keeps a copy of the instrument in the form delivered to the registrar under section 859A(3), 859B(3) or (4) or 859C(3).
- (5) Where a translation has been delivered to the registrar in accordance with section 1105, the LLP must keep available for inspection a copy of the translation.

Instruments creating charges to be available for inspection

859Q.—(1) This section applies to documents required to be kept available for inspection under section 859P (copies of instruments creating and amending charges).

- (2) The documents must be kept available for inspection—
 - (a) at the LLP's registered office, or
 - (b) at a place specified in Part 2 of the Companies (Company Records) Regulations 2008 (S.I. 2008/3006).
- (3) The LLP must give notice to the registrar—
 - (a) of the place at which the documents are kept available for inspection, and
 - (b) of any change in that place,
 unless they have at all times been kept at the LLP's registered office.
- (4) The documents and register must be open to the inspection—
 - (a) of any creditor or member of the LLP without charge, and
 - (b) of any other person on payment of the fee prescribed by regulation (2)(c) of the Companies (Fees for Inspection of Company Records) Regulations 2008 (S.I. 2008/3007).
- (5) If default is made for 14 days in complying with subsection (3) or an inspection required under subsection (4) is refused, an offence is committed by—
 - (a) the LLP, and
 - (b) every member of the LLP who is in default.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.
- (7) If an inspection required under subsection (4) is refused the court may by order compel an immediate inspection.
- (8) Where the LLP and a person wishing to carry out an inspection under subsection (4) agree, the inspection may be carried out by electronic means.

[Notice of matters disclosed on register

859R.—(1) A person taking a charge over a company's property shall be taken to have notice of any matter requiring registration and disclosed on the register at the time the charge is created.

(2) Otherwise, a person shall not be taken to have notice of any matter by reason of its being disclosed on the register or by reason of his having failed to search the register in the course of making such inquiries as ought reasonably to be made.

(3) The above provisions have effect subject to any other statutory provision as to whether a person is to be taken to have notice of any matter disclosed on the register.]”.”

DRAFT

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations repeal and replace the provisions of Part 9 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

They apply, with modifications, to limited liability partnerships the amended provisions of Part 25 of the Companies Act 2006 (c.46) as amended by the Companies Act 2006 (Amendment of Part 25) Regulations 2012 (S.I. 2012/....).

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