



ANGUILLA

A BILL FOR

**LIMITED LIABILITY COMPANY (AMENDMENT) (NO. 2)  
ACT, 2020**

Published by Authority

**LIMITED LIABILITY COMPANY (AMENDMENT) (NO. 2) ACT, 2020**

TABLE OF CONTENTS

SECTION

1. Interpretation
2. Amendment to section 38
3. Insertion of new section 56A
4. Amendment to section 60
5. Insertion of new section 60A
6. Insertion of new section 61A
7. Insertion of new Part 8A
8. Repeal of Limited Liability Company (Amendment) Act, 2020
9. Citation

Consultation Draft

I Assent

\_\_\_\_\_  
Timothy J. Foy, OBE  
Governor

\_\_\_\_\_  
Date

ANGUILLA

No. /2020

A BILL FOR

**LIMITED LIABILITY COMPANY (AMENDMENT) (NO. 2) ACT, 2020**

[Gazette Dated: ,2020] [Commencement: Assent under section 57 of the Constitution]

An Act to amend the Limited Liability Company Act, R.S.A. c. L65.

ENACTED by the Legislature of Anguilla

**Interpretation**

1. In this Act, “the principal Act” means the Limited Liability Company Act, R.S.A. c. L65.

**Amendment to section 38**

2. Section 38 of the Principal Act is amended—
  - (a) in subsection (1) by deleting the phrase “The manager of an LLC” and substituting the phrase “The manager or members of a LLC”; and
  - (b) by inserting the following subsection after subsection (2)—

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

**Insertion of new section 56A**

3. The principal Act is amended by inserting the following new section after section 56—

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

**56A.** Where—

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

- (b) an 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.”.

#### **Amendment to section 60**

4. The principal Act is amended in section 60 by deleting subsections (6) and (7) and substituting the following—

“(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 8A.”.

#### **Insertion of new section 60A**

5. The principal Act is amended by inserting the following new section after section 60—

##### **“Effect of striking off**

**60A.** (1) Where an 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 an 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 an 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).”.

**Insertion of new section 61A**

6. (1) The following new sections are inserted immediately after section 61 of the principal Act—

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

**61A.** (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 section 28 and 29, that person who was the manager at the time when the company was struck shall be required to 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 be required to retain the records in accordance with subsection (1).

(4) Where a LLC is wound up and dissolved under this Act, the liquidator who has been 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.

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

**61B.** (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 section 28 and 29, that person who was the manager at the time when the company was struck shall be required to 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 be required to 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 who has been appointed under section 55 shall 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.

#### **Court appointed custodian to retain records and register**

**61C.** (1) Notwithstanding section 61A and 61B where the Court sees fit, it 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.

(2) For the purpose of subsection (1) a custodian includes a person referred to in sections 61A 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.”.

#### **Insertion of New Part 8A**

7. The principal Act is amended by inserting the following new Part immediately after section 62—

#### “PART 8A

#### REVIVAL OF LLC

#### **Revival of LLC and Restoration to the Register**

**62A.** (1) Where an LLC is struck off the Register and dissolved, 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 an LLC must be made within 20 years of the date of the notice published in the Gazette under section 60 (5).

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

- (a) grant an 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 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 the Court is 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 (2) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.”.

**Repeal of Limited Liability Company (Amendment) Act, 2020**

8. The Limited Liability Company (Amendment) Act, 2020 (Act No. 2/2020) is repealed.

**Citation**

9. This Act may be cited as the Limited Liability Company (Amendment) (No. 2) Act, 2020.

Barbara Webster-Bourne  
*Speaker*

Passed in the House of Assembly on this      day of      , 2020

Lenox Proctor  
*Clerk of the House of Assembly*

---

Consultation Draft