

Jersey - The Introduction of Separate Limited Partnerships and Incorporated Limited Partnerships

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Jersey has now introduced two new types of limited partnerships: the "Separate Limited Partnership" and the "Incorporated Limited Partnership".

Following the enactment of the relevant enabling laws in April 2011, "Separate Limited Partnerships" are available for immediate use and it is anticipated that "Incorporated Limited Partnerships" will also be available for use at the end of May 2011.

These two new types of limited partnership are intended to offer differing degrees of legal personality and tax treatment and will complement the range of existing partnership structures already available in Jersey.

As such, they will be well-received by the funds and finance industries, providing an extra degree of flexibility for clients structuring investment or holding vehicles in Jersey.

In particular, these new limited partnerships will provide clients with the opportunity of establishing Jersey limited partnerships with their own legal personality, similar to UK limited partnerships with legal personality, but without certain of the additional accounting and disclosure burdens that will soon face UK "qualifying partnerships" under the Partnership (Accounts) Regulations 2010.

Also, to the extent that regulation such as the EU's Alternative Investment Fund Manager's Directive ("AIFMD") encourages fund promoters to consider the merits of constituting their funds as Jersey limited partnerships rather than EU domiciled vehicles, this expansion in the range of available limited partnership structures may prove helpful.

Historic position

Previously, a Jersey partnership could take the

form of:

- a general partnership governed by Jersey customary law;
- a limited partnership registered under the Limited Partnerships (Jersey) Law 1994 (the "**1994 LP Law**"); or
- a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997.

With over 1250 registered in Jersey, limited partnerships registered under the 1994 LP Law (a "**1994 LP**") are frequently used in funds structures but they are also used in other transactions where tax transparency is required.

A 1994 LP does not have separate legal personality and must contract through its general partner (usually a Jersey body corporate) which has unlimited liability for the debts of the partnership. The limited partners of a 1994 LP will generally have limited liability (subject to certain conditions requiring the limited partners to refrain from participating in the management of the partnership).

The general partner of a 1994 LP is deemed to hold the property of the partnership in its own name, as an asset of the partnership, in accordance with the partnership agreement.

New types of limited partnership

In recent years, other jurisdictions have begun offering limited partnerships with a degree of "separate legal personality". In this context, a separate legal personality means having a legal personality which is distinct from its partners.

Limited partnerships with separate legal personality have become increasingly popular (particularly with private equity and mezzanine funds) amongst fund promoters seeking,

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amongst other things, to have assets of the partnership recorded in the name of the partnership.

Following extensive consultation with industry, a demand for two models was identified, which has crystallised into two laws being enacted enabling the creation of two new types of limited partnership, Separate Limited Partnerships ("SLPs") and Incorporated Limited Partnerships ("ILPs").

In introducing these new limited partnerships; Jersey is seeking to build on the success of the 1994 Law, which is considered internationally to be modern, flexible and clearly drafted.

Each new regime is modelled on the 1994 LP Law, but will be contained in completely independent statutes. The provisions of the 1994 LP Law will not apply to an SLP or ILP.

Separate Limited Partnerships

The principal features of the proposed SLP regime are summarised below:

- as the name suggests, an SLP will have separate legal personality and will therefore be a separate legal entity from its members;
- an SLP will be unincorporated (ie. it will not be a body corporate);
- an SLP will have unlimited capacity;
- the name of an SLP must end with the words "Separate Limited Partnership" or either the abbreviations "S.L.P." and "SLP";
- similar to a 1994 LP, an SLP will still require a general partner. The general partner would still retain unlimited liability for the debts of the SLP, whilst the limited partners would retain the benefit of limited liability (subject to largely the same conditions as set out in the 1994 LP Law);
- property of an SLP may be held in the name of the SLP itself or in the name of the general partner and shall be held for the benefit of the partners in accordance with the partnership agreement; and
- an SLP or its general partner will be able to instigate legal proceedings and legal proceedings by or against an SLP may

be instigated by or against the SLP or its general partner.

Otherwise, the law governing SLPs is closely modelled on the 1994 LP Law.

Incorporated Limited Partnerships

The principal features of the proposed ILP regime are summarised below:

- similar to the SLP, an ILP will also have separate legal personality, however as its name suggests, an ILP will be incorporated (ie. a body corporate);
- the partnership agreement for an ILP will have to be entered into before the ILP can be incorporated;
- despite its incorporated status, an ILP will still retain the requirement of a general partner. The general partner of the ILP will still have unlimited liability for the debts of the partnership and the limited partners will still retain the benefit of limited liability (subject to largely the same conditions as set out in the 1994 LP Law);
- an ILP will have unlimited capacity;
- the name of an ILP must end with the words "Incorporated Limited Partnership" or any of the abbreviations "I.L.P.", "ILP", "Inc. L.P." and "Inc LP";
- an ILP will have perpetual succession;
- due to its incorporated status, the dissolution of an ILP will require a more formal process than the dissolution of an unincorporated limited partnership. The statutory winding up and dissolution provisions will be governed under separate regulations based on the equivalent Jersey company law provisions;
- an ILP will own property in its own name and will contract in its own name;
- an ILP will be able to sue and be sued in its own name;
- the ILP law will provide that the general partner of an ILP will act as an agent of the ILP;
- certain statutory obligations will be imposed on the general partner, including the duty to act honestly and in good faith with a view to the best interests of the

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ILP. A breach of this duty may be ratified by all of the partners of the ILP, subject to a solvency test. Whilst Jersey customary law has generally been understood to include principles of agency and fiduciary duties within the relationships between a general partner and the limited partners, it will be unique to ILPs for these concepts to be enshrined within statute and for this duty to be owed directly to the ILP, rather than the limited partners – much in the same way as a director of a company owes its duty to the company rather than the shareholders.

Otherwise, the law governing ILPs will retain many of the provisions of the 1994 LP Law.

Potential advantages over popular UK limited partnership forms

Wider scope of business

Whilst a Scottish limited partnership must be "between persons carrying on business with a view to profit", the SLP law provides more flexibility and permits SLPs to be established for any lawful purpose.

Investor discretion

The register of limited partners for a Scottish limited partnership is a publicly available document, whereas the register of a Jersey limited partnership is not publicly available.

New UK accounting rules not applicable

The Partnership (Accounts) Regulations 2010 are an amended set of rules expected to come into force in the UK in 2011, obliging certain UK "qualifying partnerships" to prepare and file accounts which are available to the public. Such regulations will not be applicable to Jersey limited partnerships.

Tax treatment (in Jersey)

It is anticipated that the tax treatment in Jersey for each new regime will be the same as for a 1994 LP.

Presently, a 1994 LP itself is not assessed for Jersey income tax in its own name and is tax transparent. Jersey resident partners are charged Jersey income tax on their share of income arising from the 1994 LP. Non-Jersey resident partners are only subject to Jersey income tax on Jersey source-income

other than bank and building society deposit interest, which generally results in no Jersey tax being paid by overseas partners unless the 1994 LP is trading in Jersey or is in receipt of Jersey source investment income (other than bank and building society deposit interest).

The tax treatment afforded to the different types of Jersey partnerships and their partners may differ in other jurisdictions.

Tax treatment (in the UK)

Recipients of this briefing must obtain their own UK tax advice but we currently understand that both SLPs and ILPs will be regarded as transparent for the purposes of UK income tax and UK corporation tax on income.

We also currently understand that SLPs will be regarded as tax transparent for purposes of UK capital gains tax, but that ILPs will not.

Expert legal advice is on hand

Mourant Ozannes' award winning legal team offers Jersey legal advice on the establishment of Jersey partnerships as well as ongoing advice in relation to fund structures.

This briefing can only provide a general review of this area. Legal and tax advice should be taken with regard to individual circumstances.

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