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Jersey Limited Partnerships

Corporate Services - Quick Guide

This guide is designed to provide an outline description of limited partnerships in Jersey. Different types of limited partnerships can be established in Jersey. Each type of limited partnership has distinct characteristics - providing flexible vehicles for use by sophisticated investors, families and institutions who wish to participate in structures with the benefit of limited liability but without necessarily becoming directly involved in the management of that vehicle's affairs.



Limited Partnerships

Principal features

A Jersey LP can be formed for 'any lawful purpose' and must have at least two partners; one or more general partners and one or more limited partners. A general partner can be a limited partner and vice versa. General partners manage the affairs of the LP and have unlimited liability (although can themselves be limited liability companies). Limited partners are the passive investors of the LP and have no involvement in the day-to-day management of the LP.

An LP has no separate legal personality distinct from its partners. As such, it is the general partner that must hold the LP's property and contract on behalf of the LP. The limited partner has no authority to bind the LP it must ensure that it does not participate in the management of the LP except in certain circumstances as set out in the law (e.g. the limited partner can approve the purchase and sale of assets). The consequence of a limited partner engaging in the management of the LP is that it will lose its limited liability protection. Otherwise, the liability of a limited partner in relation to the debts of the LP is limited to the difference, if any, between the value of the assets it has agreed to contribute to the LP and the value of the assets that it has actually contributed. Conversely, the general partner is liable for all the debts and obligations of the LP (but can itself be a limited liability company).

Formation

Forming an LP is an uncomplicated process. The terms of the LP are agreed by the partners and set out in a partnership agreement ("LPA"). In addition, a public



Jersey Law & Partnerships

Jersey Law Jersey has enacted separate laws to deal with each type of partnership:

- > The legislation governing Jersey limited partnerships ("LPs") is the [Limited Partnerships \(Jersey\) Law 1994](#) (the "Law").
- > The legislation governing Jersey separate limited partnerships ("SLPs") is the [Separate Limited Partnership \(Jersey\) Law 2011](#) (the "SLP Law").
- > The legislation governing Jersey incorporated limited partnerships ("ILPs") is the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#) (the "ILP Law").

The differences in these laws are largely only those necessary to accommodate for the differences in the legal personalities of each respective partnership type. There are also Jersey limited liability partnerships, but these are outside the scope of this guide.

There is no ability under the laws described above for one type of Jersey partnership to convert to another.

declaration (the "declaration") must be filed with the Jersey Registrar stating the name of the LP, confirming its registered address in Jersey and giving details of the general partner and the expected duration of the LP. The purpose and activities of the LP need to be privately explained to the Registrar, but are not disclosed in the public declaration. Similarly, there is no need to file a copy of the partnership agreement and there is no requirement to file details of the limited partners or their capital contributions.

A registration fee of £500 is payable to the Registrar, upon which the Registrar can issue a certificate confirming that the declaration has been filed and that the association of the partners has become a 'limited partnership' (i.e. that the liability of the limited partners has become limited).

Regulatory matters

As with companies, LPs are required to obtain consent under the Control of Borrowing (Jersey) Order 1958. This is usually dealt with at the same time as the execution of the LPA and submission of the declaration to the Registrar. Where the LP is created for private business and where there are fewer than fifteen limited partners this process can be achieved within

a few days and there are no further regulatory matters to undertake.

However, if an LP intends to offer limited partnership interests to the public as a collective investment scheme, permission under the Collective Investment Funds (Jersey) Law 1988 will also be required. In addition, depending upon the activity of the LP (e.g. where it is to be used to engage in financial service activities with third parties), the regulatory treatment of the LP may be subject to the Authorisation Division of the JFSC and the GP may be subject to other regulatory requirements.

Administration

The general partner will have the responsibility for the management and administration of the LP in accordance with the terms of the LPA. The LPA can be tailored as required within the confines of the Law but should set out the respective rights and obligations of the partners.

An LP must have a registered office in Jersey and must keep at the registered office copies of the LPA, the declaration, a register of limited partners and a register of limited partner contributions. These documents are private and are only available for inspection by the partners.

Other than in certain limited circumstances, there is no requirement for an LP to have a Jersey resident general partner.

The Law requires LPs to keep accounting records that are sufficient to show its transactions and that will disclose with reasonable accuracy at any time its financial position. There is no requirement for the accounts to be audited and no requirement for the accounts to be filed publically. Accounts may be maintained in any currency.

Contributions and distributions

The Law allows for limited partners' contributions to be made in the form of money, other property or in services. Subject to the terms of the LPA, Jersey LPs have the ability to operate on a variable capital basis, which allows capital contributions to be increased or returned to limited partners during the lifetime of the LP. A limited partner can lend funds to an LP and, in so doing, will rank as a creditor in respect of that loan *pari passu* with external creditors.

An LP may freely make distributions of capital and profit, subject to a simple solvency test. Distributions that are later recognised to have been made whilst insolvent are subject to clawback for a period of six months. Subject to the LPA, limited partners rank *pari passu* with each other in respect of the return of their contributions and *pro rata* in respect of profits – meaning that you can easily create different classes of limited partner interest.

Dissolution

The dissolution process is quite straightforward. An LP is dissolved upon the registration of a statement of dissolution executed by the general partner. This must be undertaken even where the LP has come to the end of its stated duration and/or where the LPA makes provision for the LP terminating upon some other event (e.g. upon the death of a limited partner). In addition, an LP will be dissolved immediately where there is no general partner able to act, although there is provision for continuance in these circumstances.

Upon dissolution, and once the LP's creditors have been paid, the remaining funds are returned to the partners in the following order:

- I. To general partners other than for capital and profits.
- II. To limited partners in respect of capital and profits.
- III. To general partners in respect of capital and profits.

In Jersey, an LP will be fiscally transparent; meaning that each partner is assessed separately according to his or her own status and that the LP is not itself assessed to tax in Jersey at all. Apart from where an LP is trading in Jersey, or is in receipt of Jersey-source investment income (other than bank interest), distributions paid to partners are paid gross without deduction in respect of Jersey tax.

This treatment is usually reflected in other jurisdictions. For example, where a Jersey LP undertakes business in the United Kingdom, it is understood that the LP will be transparent for the purposes of UK income/corporation tax and UK capital gains tax so that each partner is liable to tax on their own personal share of the income/gain under the taxation regime of their country of residence.

Generally speaking, this fiscal transparency is the principal benefit of an LP. One advantage of this characteristic is that a limited partner may be able to set off his share of an LP's losses against profits he has from other investments. In addition, the profits and losses of an LP that are attributable to any partner will usually be treated as arising in the country in which the LP's investments are made; which may allow the partner to make use of any tax treaties that exist between that country and his country of residence.

Uses

Jersey LPs have become favoured vehicles for any enterprise or planning that requires flexibility, privacy, limited liability and the ability to return capital easily to investors upon the realisation of an investment. As such, we have seen Jersey LPs used for:

- > property development and holding;
- > private equity and venture capital arrangements;
- > asset protection schemes;
- > collective investment and fund vehicles;

In summary, the Law allows for Jersey LPs to be used in a broad range of financial planning arrangements. Jersey may have advantages over other jurisdictions in that the identity of limited partners and their contributions remain confidential, financial statements remain private, there is no upper limit on the number of limited partners and there is no restriction on the business or investment that a Jersey LP may undertake.



Separate Limited Partnership

The description of LPs in section 2 above applies equally to an SLP except in respect of the differences listed below. The requirements for formation are substantially the same as for LPs and the partners simply need to decide at the outset whether to register the partnership under the Law or the SLP Law. Once this is done, the main differences compared to LPs are as follows:

- > An SLP is not a body corporate, but it does have separate legal personality. This means that the SLP can itself hold property, have rights and obligations, transact in its own name and sue and be sued in its own name.
- > Alternatively, should it be necessary for structuring reasons, the SLP can hold assets via its general partner and transact via the general partner.
- > Tax treatment in Jersey is the same as for LPs and it is expected that tax treatment in other jurisdictions will also be the same as for LPs. For example, it is our understanding that in the UK an SLP will be treated as transparent for the purposes of both income and gains.

The above characteristics may make the SLP a useful vehicle for structures that require a carried interest function and where tax transparency and limited liability are needed. SLP's may be of particular use when a partnership must deal with jurisdictions that do not recognise the concept of limited partnerships. It should be noted that a Jersey SLP is similar in nature to a Scottish limited partnership, but without the requirement of needing to be formed 'with a view to profit' and without the administrative accounting and disclosure burdens that a Scottish partnership might have.



Incorporated Limited Partnership

Again, the description of LPs in section 2 above applies equally to an ILP except in respect of the differences listed below.

- > An ILP is a body corporate, with separate legal personality to its partners.
- > An ILP has perpetual succession.
- > An ILP can itself hold property, have rights and obligations, transact in its own name and sue and be sued in its own name.
- > To incorporate an ILP, the general partner must provide the Registrar with, inter alia, a statement that the LPA has been executed by the initial partners.

- > The general partner's liability for the debts and obligations of the ILP will arise only once the ILP itself has defaulted.
- > The general partner owes the ILP a fiduciary duty similar to that owed by a director to a company. This means that the general partner must always act in the best interest of the ILP, although any breach of this duty can be sanctioned by all the partners of the ILP subject to a solvency test.
- > Dissolution of an ILP is a slightly more formal process, with the winding up and insolvency process being more similar to that of a Jersey company and with no regard given to the death, dissolution or bankruptcy of the individual partners.
- > Tax treatment in Jersey is the same as for LPs and it is expected that tax treatment in other jurisdictions will also be the same as for LPs in relation to income, but that care should be taken in relation to tax on gains. For example, it is our understanding that in the UK an ILP will be treated as transparent for the purposes of income, but opaque for the purposes of UK gains.

The above characteristics will make ILPs useful in circumstances where there is a risk that a jurisdiction outside of Jersey might not treat a limited partner of a partnership as having limited liability. This is because an ILP is a body corporate and it is usually the case that most jurisdictions will accept that a body corporate is governed by the legislation of the jurisdiction in which it is incorporated.

Summary of differences between different Jersey partnerships

Characteristic	LP	SLP	ILP
Name requirements	Must end 'Limited Partnership', 'L.P.' or 'LP'	Must end 'Separate Limited Partnership', 'S.L.P.' or 'SLP'.	Must end 'Incorporated Limited Partnership', 'I.L.P.', 'ILP', or 'Inc. L.P.' or 'Inc LP'
Separate legal personality	No	Yes	Yes
Body corporate	No	No	Yes
Perpetual succession	No	No	Yes
Hold property in own name	No	Yes	Yes
Transact in own name	No	Yes	Yes
Unlimited liability of general partner	Yes	Yes	Only after ILP itself defaults
Assignment of limited partners' interests	Yes, as provided for within LPA or with consent of other partners	Yes, as provided for within LPA or with consent of other partners	Yes, as provided for within LPA.
Dissolution process	Upon incapacity of general partner and/or upon delivery of statement to Registrar	Upon delivery of statement to Registrar	Formal procedure similar to company winding up

This guide will not answer all questions regarding Jersey partnerships and it should not be considered to represent any tax or legal advice. For a more detailed discussion around this area please contact one of our professionals below:



Terry Northcott
Executive Director - Corporate
☎ +44 7797 715 421
✉ terry.northcott@fiduchi.com



Robert Ayliffe
Executive Director
☎ +44 7700 349 750
✉ robert.ayliffe@fiduchi.com



Christopher Dungan
Regional Director - Middle East
☎ +971 52 957 8301
✉ christopher.dungan@fiduchi.com

PRIVATE CLIENT CORPORATE EMPLOYEE FUNDS MARINE & AVIATION

LONDON
Tallis House, 2 Tallis Street
Blackfriars
London EC4Y 0AB
✉ london@fiduchi.com
☎ +44 207 975 1475

JERSEY
Kensington Chambers
46/50 Kensington Place
St Helier, Jersey JE4 0ZE
✉ jersey@fiduchi.com
☎ +44 1534 755 155

DUBAI
Jumeirah Bay, Tower X2
Dubai 124600
United Arab Emirates
✉ dubai@fiduchi.com
☎ +971 52 957 8301



www.fiduchi.com

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