



Corporate

Jersey Separate and
Incorporated Limited Partnerships
are now available

September 2011



New Jersey ILPs and SLPs

Two new forms of limited partnership have recently been introduced under Jersey law. These are:

- the separate limited partnership ("SLP") (having separate legal personality); and
- the incorporated limited partnership ("ILP") (being a body corporate).

It is expected that SLPs and ILPs will feature across a broad range of funds and private equity structures (particularly in management and carried interest structures). However, we also anticipate their uses in several other areas both for corporates and private clients.

Save for the key differences noted below, the essential structural, administrative and regulatory requirements of SLPs and ILPs as limited partnerships follow closely those for traditional Jersey limited partnerships ("LPs") under the Limited Partnerships (Jersey) Law 1994. Please see our briefing note entitled "Jersey Limited Partnerships" for further information on the structure, formation, administration and regulation of LPs (the "**LP Briefing Note**").

Distinct legal personality

Unlike LPs, SLPs and ILPs both have distinct legal personality – i.e. both SLPs and ILPs are "persons" distinct from their partners. Accordingly, SLPs and ILPs are, for example, able to contract, hold property, sue and be sued purely in their own name. This is in contrast to LPs which may only do so through their general partner.

Aside from this additional feature, SLPs operate in essentially the same way as existing LPs. The general partner of an SLP (but not an ILP) is also able to contract, hold property, sue and be sued on behalf of the partnership like a general partner of an LP if this is preferred.

ILPs are bodies corporate

Historically there had been doubts as to whether incorporated limited partnerships would be treated as bodies corporates under UK law or other on-shore jurisdictions. In contrast (and uniquely), Jersey's new ILP legislation ensures that an ILP established in Jersey has the characteristics of a body corporate for those purposes whilst retaining core partnership

characteristics to retain its tax transparency. Unique features of Jersey ILPs include the following:

- (a) ILPs have perpetual succession (that is to say that an ILP continues to exist irrespective of the fate of its partners).
- (b) The dissolution of ILPs is governed by more detailed winding up and insolvency provisions similar to those applicable to Jersey companies.
- (c) The general partner of an ILP acts as an agent of the limited partnership (rather than as a partner of the partnership) and owes statutory fiduciary duties to the ILP similar to those a director owes to a Jersey company - for example, a general partner of an ILP is required to act honestly and in good faith with a view to the best interests of the ILP. The general partner also owes the usual duties directly to the limited partners of the ILP.
- (d) The general partner of an ILP is only responsible for the debts and other obligations/liabilities of the ILP after the partnership itself has defaulted. This is in contrast to the position in respect of general partners of LPs and SLPs, which have unconditional unlimited personal liability for the debts and other obligations/liabilities of the partnership (although in practice the unlimited liability of the general partner is usually dealt with by having another LP or a limited liability company as the general partner).

Fund Structuring

Without losing the limited liability of its limited partners, an LP, ILP or SLP can act as a general partner of any type of Jersey limited partnership. This allows for unlimited "stacking" of the general partner of a Jersey limited partnership.

Relevant Jersey laws have been updated so that an ILP and SLP (like an LP) can be a fund vehicle or fund services provider, including a general partner, manager, investment manager and/or investment adviser.

Given its unique combination of partnership and corporate characteristics, we envisage that an ILP may usefully be deployed in management and carried interest structures as well as a fund vehicle itself, especially where the ILP is required to be a party to arrangements such as transactional or bridge financing.

Tax treatment

Jersey

SLPs and ILPs are treated in the same manner as LPs for Jersey tax purposes, which is on a transparent basis, meaning that the partners (and not the partnership itself) are subject to tax (if any) on their share of profits.

United Kingdom

Whilst specific UK tax advice should be sought, we understand that Jersey SLPs and ILPs should be treated as transparent for the purposes of UK income tax, chargeable gains and corporation tax, along with being transparent for the purposes of SDLT.

UK Qualifying Partnerships Rules

We also understand that:

- (a) LPs, SLPs and ILPs are not "qualifying partnerships" under the UK's Partnerships (Accounts) Regulations 2008; and
- (b) an English or Scottish limited partnership that has an ILP as its general partner is not a "qualifying partnership" under the Regulations and this analysis will not be affected by the proposed UK Partnerships (Accounts) (Amendment) Regulations,

and accordingly, Jersey LPs, SLPs and ILPs (and UK limited partnerships with an ILP as a general partner) will not generally be subject to a statutory audit requirement.

Further enquiries

For further information or professional advice - including on the potential uses for which SLPs and ILPs may be advantageously employed - please speak to your usual Carey Olsen contact.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

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Table comparing certain features of Jersey, English and Scottish limited partnerships

	Legal personality?	Body corporate?	Transparent for UK income tax / corporation tax on income?	Transparent for UK capital gains tax / corporation tax on chargeable gains?	Transparent for UK SDLT?	Are UK partnership tax returns required where partnership managed and controlled from outside UK and no trading activities in UK?	English or Scottish LP avoids “qualifying partnership” requirements if Jersey ILP acts as a GP?	Disclosure of limited partners on a public register?	Requirement to file audited accounts?
JERSEY LP	N	N	Y	Y	Y	N**	N	N	N
JERSEY SLP	Y	N	Y	Y	Y	N**	N	N	N
JERSEY ILP	Y	Y	Y	Y*	Y	N**	Y	N	N
ENGLISH LP	N	N	Y	Y	Y	Y	N	Y	Y
SCOTTISH LP	Y	N	Y	Y	Y	Y	N	Y	Y

* We are aware that some highly respected UK tax counsels are taking a robust view on Jersey ILP transparency for UK tax purposes.

** If the partnership has a formal tax presence in the UK, it is likely that a UK partnership tax return will be required.

Contact us

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