

Upgrades to Jersey's Limited Partnership Law

Briefing Summary: Jersey is shortly to introduce some refinements to the Limited Partnerships (Jersey) Law 1994 (the "LP Law") to ensure that the Jersey limited partnership remains globally competitive as a vehicle for investment funds and other types of asset holding structures.

Service Area: Investment Funds

Sector: Investment and Wealth Management, Private Equity

Location: Jersey

Created Date: 12 May 2022

The amendments are expected to come into force in the third quarter of 2022 after the Limited Partnerships (Amendment No.2) (Jersey) Law 202- (the "Amendment Law") has received Privy Council approval. We do not envisage that, for the most part, the implementation of the Amendment Law will necessitate any immediate amendments to existing limited partnership agreements; the changes to the LP Law are simply designed to give partners additional clarity on certain key statutory provisions and to allow partners a greater degree of flexibility in their contractual arrangements.

The principal amendments to be introduced by the Amendment Law are as follows:

Liability of limited partners to third party creditors

Additional statutory "safe harbours" are being introduced so that a limited partner will not be participating in the management of the limited partnership (and thus lose their limited liability) by undertaking certain activities, including:

- appointing, removing, nominating, electing or otherwise participating in a limited partnership's advisory or investment committee
- exercising veto rights in respect of, amongst other things, the acquisition or disposal or transfer of any limited partnership property
- calling, requesting, attending or participating in any meeting of the partners
- being a partner in a general partner which is itself a partnership
- enforcing a right under the limited partnership agreement

In addition, the LP Law no longer potentially strips a limited partner of its limited liability if that limited partner's name appears in the name of the limited partnership. However the limited partnership must not have a name that is calculated or likely to mislead.

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Other provisions re: liability of partners

A limited partner's liability for the limited partnership's debts and obligations, which is stated to be limited to the amount of the limited partner's contribution (as recorded in the limited partnership's records), is now to be made expressly subject to the terms of the limited partnership agreement.

Right to profits/return of contribution

The limited partnership agreement may state that a partner has no right to be repaid its contribution or to receive profits from the limited partnership. This change dispenses with the need for all partners to be given a nominal profit share even if the commercial intention is that one or more partners do not share in the limited partnership's profits.

Limited partners' information rights

A limited partner's information rights (including to inspect the limited partnership's records and to take copies of them) are now expressly subject to the limited partnership agreement. This is particularly useful in the context of a carried interest vehicle where individuals' carry entitlements are often commercially sensitive and confidential.

Third party rights

The limited partnership agreement may confer contractual rights on persons who are not parties to the limited partnership agreement. This is helpful to ensure that, for example, the limited partnership's investment manager/adviser and its staff are able to enforce any indemnity against the limited partnership directly.

Limited partners' repayment obligations

The circumstances in which a limited partner is obliged under the LP Law to repay either (a) profits which have been distributed to them or (b) contributions which have been returned to them, have been simplified. Pursuant to the Amendment Law:

- a limited partner will be obliged to repay distributed profits and/or returned contributions if, at the time and immediately following receipt, the limited partnership was insolvent.
- the statutory six month period during which a limited partner is obliged to make such repayment may be extended by the limited partnership agreement.

A limited partnership's winding up and dissolution

The LP Law's provisions relating to termination, winding up and dissolution have been updated to ensure that a limited partnership does not dissolve (thereby potentially causing limited partners to lose their limited liability status) until the winding up process has been completed. In summary, the revised process is as follows:

- Step 1 – the limited partnership commences its winding up (ie on termination pursuant to the limited partnership agreement).
- Step 2 – the affairs of the limited partnership are wound up by the general partner(s) or by other person(s) authorised under the LP Law or the limited partnership agreement to carry out the winding up.
- Step 3 – on completion of the winding up process, a request for cancellation of the limited partnership's registration is delivered to the registrar of limited partnerships in Jersey (the "**Registrar**").
- Step 4 – the limited partnership's dissolution takes effect upon the cancellation being registered by the Registrar.

Other circumstances in which a limited partnership may be dissolved

The Amendment Law sets out certain other circumstances in which a limited partnership is wound up and dissolved:

- **The general partner's "continued default"** – the Amendment Law provides that, where the general partner is in continuing default of certain statutory duties despite the Registrar having given 30 days' notice of such default, the Registrar may cancel the registration of the limited partnership and its dissolution will take effect immediately upon registration of the cancellation. In such circumstances, the Amendment Law:
 - protects the limited liability of the limited partners
 - makes the general partner liable for the cost of reinstatement of the limited partnership without recourse to limited partnership assets
 - provides that the general partner remains liable for the limited partnership's debts and obligations
 - limits the general partner's powers following dissolution to realising the limited partnership's assets, discharging its liabilities, distributing any surplus assets, and taking any necessary steps in connection with the winding up or applying to the Court for the reinstatement of the limited partnership
- **The general partner's death, insolvency, withdrawal etc** – the Amendment Law dovetails the revised winding up and dissolution process with the LP Law's existing provisions requiring a limited partnership to be wound up following the general partner's death, insolvency, withdrawal etc where the limited partners have not elected a replacement general partner within 90 days.

- **Application to Court** - the Court may order the winding up of a limited partnership on the application of the Registrar, if the Court is satisfied that the limited partnership's activities are bringing Jersey's reputation into disrepute.

Reinstatement of a dissolved limited partnership

Following the application by a partner, creditor or any other interested party at any time before the tenth anniversary of the cancellation of a limited partnership's registration (and consequent dissolution), the Court may make an order declaring the cancellation of the registration and dissolution of the limited partnership void, thereby reinstating the dissolved limited partnership.

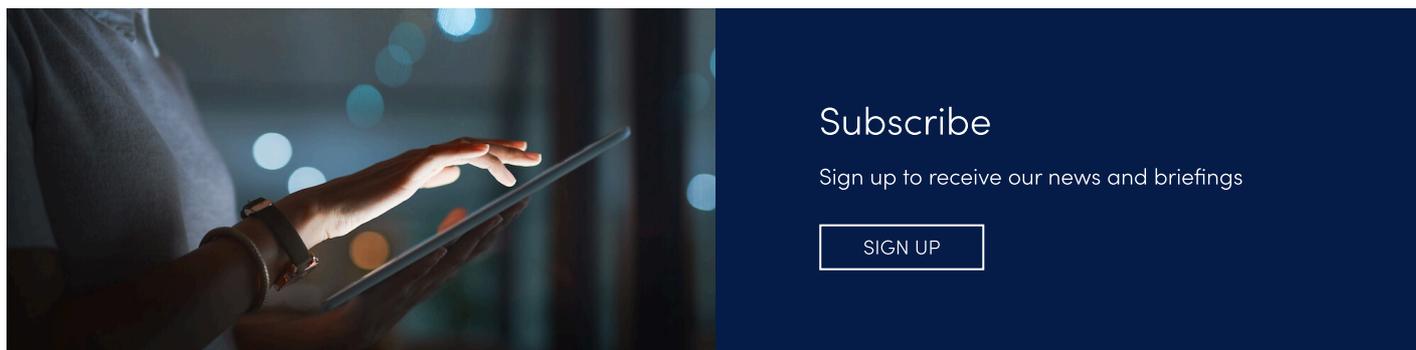
Annual confirmation

To enable the Registrar to supervise limited partnerships more effectively, there is a new requirement for an "annual confirmation" to be delivered to the Registrar by the end of February in each year. This must be done by either the general partner or a "nominated person" authorised on its behalf (which could include a limited partner), and the confirmation must state:

- the matters set out in the original declaration of limited partnership are correct
- the limited partnership's status (as being either continuing or in wind up)
- any other prescribed information prescribed.

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.

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