

Jersey limited partnerships

Briefing Summary: The Limited Partnerships (Jersey) Law 1994 (the “**Law**”) governs Jersey limited partnerships.

Service Area: Corporate, Investment Funds

Sector: Trust and Company Business

Location: Jersey

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A limited partnership seeks to combine the flexibility and “tax transparency” offered by a partnership structure with the benefits, for limited partners, of limited liability offered by a company. The Jersey limited partnership regime has particular advantages over other offshore jurisdictions: no Jersey general partner is required, there is no upper limit on the number of limited partners, there is limited information required to be made publicly available, there is no audit requirement and a limited partner may have greater involvement in management than in some other jurisdictions.

Jersey limited partnerships continue to be used extensively. Numerous collective investment schemes and private venture capital schemes have a limited partnership structure and limited partnerships also form the basis of many property holding and financing structures. Jersey has recently introduced refinements to the Law to ensure that the Jersey limited partnership remains globally competitive.

Structure

A limited partnership must have at least two partners, one or more general partners and one or more limited partners. There is no limit under the Law on either the number of limited partners or the number of general partners.

A general partner can also be a limited partner and *vice versa*.

General partners

A general partner has that status if named as such in the declaration delivered to the Jersey registrar of limited partnerships (the “**Registrar**”). That declaration is so delivered as a precondition of establishment of the limited partnership. If a change is made to the particulars stated in the declaration, a statement of this must be delivered.

Key Contacts



Christopher Griffin
PARTNER, JERSEY
+44 (0)1534 822256

[EMAIL CHRISTOPHER](#)



Claire Le Quesne
PARTNER, JERSEY
+44 (0)1534 822216

[EMAIL CLAIRE](#)



Robert Milner
PARTNER, JERSEY
+44 (0)1534 822336

[EMAIL ROBERT](#)



James Mulholland
PARTNER, JERSEY
+44 (0)1534 822369

[EMAIL JAMES](#)



Daniel O'Connor
PARTNER, JERSEY
+44 (0)1534 822249

[EMAIL DANIEL](#)

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A general partner undertakes the management of the partnership and has all the rights and powers and is subject to all the restrictions and liabilities of a partner of a 'general partnership' except as provided for in the partnership agreement and under the Law.

The general partner is liable for all the limited partnership's debts and obligations if the limited partnership's assets are insufficient to discharge them. General partners are typically limited liability companies.

The Law does not require that a general partner be resident or, if a company, incorporated, in Jersey, though depending on the activity of the limited partnership there may be a separate regulatory requirement, or other preference, for this.

Limited partners

A limited partner has that status if named as such in the register of the limited partnership.

The Law defines a partnership interest as "a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets and other benefits conferred by the partnership agreement". Limited partnership interests can, in principle, be assigned.

Limited liability

Subject to the terms of the partnership agreement, the liability of a limited partner to the limited partnership is limited to the difference, if any, between the amount of money or the value of other property or services that it has contributed and the amount of money or the value of other property or services it has agreed to contribute, and, for a period of six months after receipt by it of a payment representing a share of profits or a return of whole or part of the contribution (or such longer period specified by the partnership agreement), it will be liable to repay (with interest) such payment if the limited partnership was not solvent at the time of or immediately following such payment. Solvency is determined according to a "cash flow" test: "solvent" means that the general partner is able to discharge the debts and obligations of the limited partnership (not including liabilities to partners in respect of their partnership interests) as they fall due out of the assets of the limited partnership.

Non-participation in management

Limited partners are not intended to, and should not, participate in the management of the limited partnership. They are effectively passive investors and as limited partners have no implied authority to bind the partnership.

The Law provides that if a limited partner participates in the management of the limited partnership in its dealings with persons who are not partners, that limited partner shall be liable in the event of the insolvency of the limited partnership for all debts and obligations of the limited partnership incurred during the period that it participated in the management as though it were for that period a general partner. But a limited partner is so liable only to a person who transacts with the limited partnership during the period of, and with actual knowledge of, the participation of the limited partner in the management of the limited partnership and who then reasonably believed, based upon the limited partner's conduct, the limited partner to be a general partner.

Furthermore, the Law sets out a long non-exhaustive list of activities that a limited partner may do without participating in the management of the limited partnership. These include, amongst other things:

- acting as a director, officer or shareholder of a corporate general partner;
- consulting with and advising a general partner with respect to the activities of the limited partnership;
- appointing, removing, nominating, electing or otherwise participating in the selection of a representative to serve on a board or committee (such as an advisory or investment committee), or acting as a member of that board or committee, directly or indirectly;
- voting on or 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 partnership that itself is a general partner; and
- enforcing a right under the partnership agreement.

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 partnership agreement. This is particularly useful in the context of a carried interest vehicle where individuals' carry entitlements are often commercially sensitive and confidential.

Contributions, loans and distributions

Contributions and loans

The Law allows flexibility as to the form of limited partners' contributions. They can be made in money (which can be in any currency), any other property, or services.

Limited partnerships have the capacity to operate on a variable capital basis allowing capital contributions to be increased or decreased during the life of the partnership or to be payable in instalments as required for investment.

A limited partner is permitted, amongst other things, to lend money to the limited partnership. A limited partner, who is not also a general partner, will rank in respect of such a loan – and other transactions – as a creditor of the limited partnership *pari passu* with external creditors. A limited partner's claim for profits or a return of the limited partner's capital contribution is of course subordinated (on which please see below, including under 'Winding up and dissolution'). For this, and other reasons, additional funding is commonly provided by limited partners by way of loans.

Distributions

Unless the partnership agreement provides otherwise, the limited partners are entitled to share in the profits of the limited partnership *pro rata* to their paid up contributions, and their claims in respect of the return of their contributions rank equally. Thus different classes of limited partnership interest can be created.

The partnership agreement may provide that a partner has no right to return of its contribution or to receive profits, or both. This dispenses with the need for every partner to be given a profit share, however small, even where the commercial intention is that one or more partners do not share in the limited partnership's profits.

Profits including capital profits may be distributed, and capital returned, to the limited partners provided that at the time of and immediately following the relevant payment the limited partnership is solvent. Subject to this proviso a limited partner may demand the return of its contribution immediately before the completion of the winding up of the limited partnership, at a time specified in the partnership agreement, or if no time is specified for such return or for dissolution, on six months' notice.

Returns of capital *in specie* are permissible if the partnership agreement so provides or all the partners consent.

Establishment of a limited partnership, regulatory requirements; partnership agreement

Name

Initially, application should be made to reserve a name for the proposed limited partnership. The name must end with the words "Limited Partnership" or the abbreviation "L.P." or "LP" and may include the name or derivation of the name of any general partner or limited partner. However a limited partnership must not have a name that is calculated or likely to mislead. The Registrar may refuse to register a declaration if the name to be registered is, in the Registrar's opinion, misleading or otherwise undesirable.

Formation

A declaration is required to be delivered to the Registrar (and a certificate issued by the Registrar on registration of that declaration) for a partnership to have the status of a limited partnership and this must be signed by each person who is to be a general partner on formation and must state certain particulars in respect of the limited partnership, including, amongst other things, the limited partnership's name and details of the partnership's intended registered office and general partner(s).

A one-off fee is payable on registration, the amount of which will depend on how quickly registration is required.

Regulatory requirements

Unless an exemption applies, consent under the Control of Borrowing (Jersey) Order 1958 will need to be obtained in order to, amongst other things, create interests in a limited partnership. For this, disclosure of certain information will need to be made to the Jersey Financial Services Commission including the purpose of the limited partnership, details of the general partner and if it is a company, its beneficial owners, and details of the limited partners. This information, other than the identity of the general partner, will not be placed on the limited partnership's public records.

Limited partnerships are commonly used as private or public investment funds. For more on this, including Jersey regulation, please see our briefing note 'A guide to funds and private equity in Jersey'.

Service providers in Jersey, including law firms, require certain information from clients to satisfy applicable anti-money laundering and "Know your client"/"Client due diligence" rules. Much of that information will be the same as that required by the Jersey Financial Services Commission as above.

An annual confirmation statement in respect of the limited partnership is required to be provided to the Registrar by the general partner and a fee is payable in relation to that.

Partnership agreement

The partnership agreement, which must be in writing, should set out, amongst other things, the respective rights and obligations of each general partner and limited partner. The provisions of the agreement can be tailored as required, subject to the Law.

The agreement does not have to be filed as a document of public record with the Registrar.

A partnership agreement may provide rights to a person who is not a partner and the manner in which those rights may be varied or extinguished (which unless the partnership agreement provides otherwise, is only with the consent of the person) and that person may enforce those rights even without being a party to the 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.

If a partnership agreement provides that where a partner breaches the provisions of the partnership agreement, that partner may be subject to or suffer sanctions or consequences as a result of the breach as specified in the partnership agreement, then those sanctions or consequences are not unenforceable solely on the basis that they are penal in nature.

Public records

The public records of limited partnerships are limited. The limited partnership's declaration (and, once processed, any amendment thereto) which is delivered to the Registrar, is available for public inspection.

The partnership agreement and other details of the limited partnership, including, for example, the nature of the business carried out by the limited partnership, the identity of the limited partners and their capital contributions, are not matters of public record.

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 partnership agreement. This is particularly useful in the context of a carried interest vehicle where individuals' carry entitlements are often commercially sensitive and confidential.

Administration

Registered office

A limited partnership must have a registered office in Jersey.

Certain documents must be kept at the limited partnership's registered office, including, amongst other things, a register of limited partners, a copy of the declaration of limited partnership and of the partnership agreement, and details relating to contributions of limited partners.

These records are private and may only (but subject, as above, to the partnership agreement) be inspected and copied by partners.

Accounting

It is necessary for a limited partnership to maintain accounting records. There is no requirement under the Law for limited partnership accounts to be audited, but audited accounts may be expressly required by the partnership agreement.

Limited partnership accounts may be maintained in any currency.

Administrators

A limited partnership without its own local operating presence will need certain on-going administration services provided by a local service provider, which commonly would be combined with such services provided to a Jersey general partner. These may consist of a straightforward “company-secretariat” type service (including holding the statutory records) together with provision of a registered office or a fuller service, if required. There are various professional administration firms (trust companies) in Jersey which can provide such services.

Winding up and dissolution

A limited partnership does not dissolve until the winding up process has completed. The Law allows for both voluntary and court-ordered winding up, and the partnership agreement may specify the process and responsible parties. In summary, the process that is followed in the usual course is as follows:

- **Step 1** – the limited partnership commences its winding up.
- **Step 2** – the affairs of the limited partnership are wound up by the general partner(s) or by other person(s) authorised under the Law or the 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.
- **Step 4** – the limited partnership’s dissolution takes effect upon the cancellation being registered by the Registrar.

There are other circumstances in which a limited partnership is wound up and dissolved. These include, in summary, where the general partner is in continued default of certain statutory duties; on the general partner’s death, insolvency or withdrawal, and a replacement is not elected within 90 days; and on application by the Registrar to the Royal Court, if the court is satisfied that the limited partnership’s activities are bringing Jersey’s reputation in disrepute.

Jersey tax treatment of limited partnerships and limited partners

The limited partnership is not itself subject to Jersey income tax. Subject, in the case of companies, to the Jersey “Zero/Ten” tax regime, the limited partners are each individually assessable on their share of the partnership income. This position differs from that of ordinary Jersey partnerships where a joint assessment is raised on the partners in the name of the partnership.

Security

Security can be granted over a limited partnership interest, and this needs to satisfy any relevant requirements of the Law and comply with any relevant terms of the partnership agreement; as well as satisfying the requirements of the Security Interests (Jersey) Law 2012.

SLPs and ILPs

Other forms of Jersey limited partnership: (a) the separate limited partnership with separate legal personality; and (b) the incorporated limited partnership, are also available, on which please see our separate briefing note.

FAQs

What law governs Jersey Limited Partnerships?

Jersey limited partnerships are governed by the Limited Partnerships (Jersey) Law 1994, as amended, which combines the flexibility and tax transparency of partnerships with the limited liability benefits of companies. The law also allows eligible foreign limited partnerships to migrate to Jersey.

What are the key advantages of a Jersey Limited Partnership?

A Jersey limited partnership offers several advantages. There is no requirement for a Jersey-resident general partner, no upper limit on the number of limited partners; public disclosure requirements are minimal, and no obligation to conduct an audit. Additionally, there are enhanced statutory "safe harbours" for limited partners, allowing greater involvement in certain activities compared to similar structures in some other jurisdictions without losing limited liability.

How is a Jersey Limited Partnership structured?

A Jersey limited partnership must have at least two partners: one or more general partners and one or more limited partners. A general partner can also act as a limited partner. General partners manage the partnership and have unlimited liability, while limited partners are passive investors whose liability is limited to their contributions.

What is the liability of a limited partner?

The liability of a limited partner is restricted to the amount they have contributed or agreed to contribute, subject to the terms of the partnership agreement. They may be required to repay distributions received within six months if the partnership was insolvent at the time of the distribution.

Can limited partners participate in management?

Generally, limited partners cannot participate in the management of the partnership without risking their limited liability status. However, they are allowed to sit on advisory committees, vote on key matters, consult with general partners, and enforce rights under the partnership agreement.

How are contributions and distributions handled?

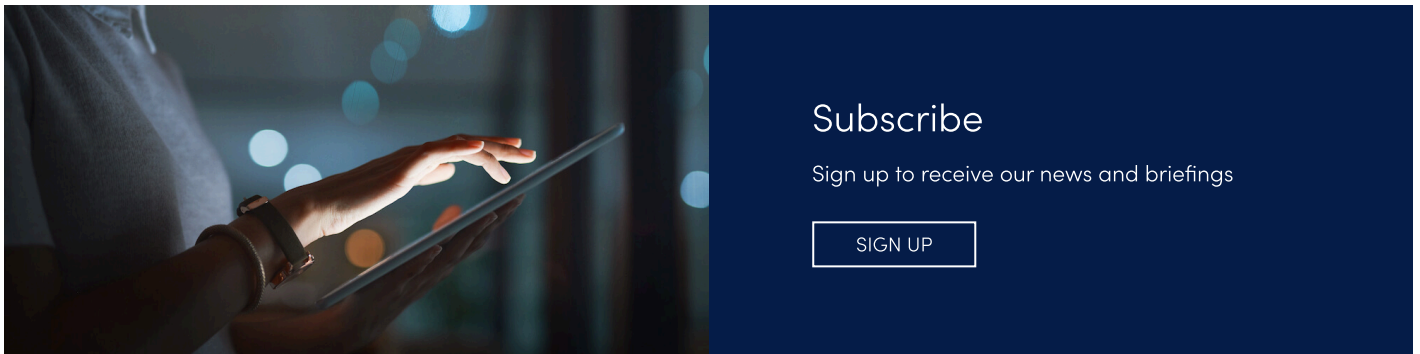
Contributions to a Jersey limited partnership can be made in cash, property, or services. Distributions of profits or capital are permitted as long as the partnership remains solvent. It is also possible to create different classes of partnership interests.

Are there any regulatory requirements?

Yes, Jersey limited partnerships must be registered with the Jersey Registrar. Depending on the nature of their activities, they may also need to obtain additional regulatory consents, particularly if they operate as investment funds.

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

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