

Jersey funds market update: Limited partnerships, legislation updates and the JFSC's AML/CFT Handbook

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Limited partnerships changes

The Limited Partnerships (Amendment No.2) (Jersey) Law 2022 came into force on 12 August 2022. The amendments made pursuant to the law are a modernisation of the Limited Partnership (Jersey) Law 1994, providing clarification and enhancement in certain key areas. These include:

- **Information Rights:** The Law amends the rights of limited partners to inspect and take copies of the limited partnership's records so that they are now expressly subject to the LPA. Limiting such rights is particularly useful in the context of a carried interest vehicle where individuals' carry entitlements are often commercially sensitive and confidential.
- **Right to Return of Contributions and/or to receive profits:** The LPA may now be amended to provide that a partner has no right to a return of their contribution or to receive profits. This is beneficial if the intention is that one or more partners do not share in the limited partnership's profits and dispenses with the erroneous need for all partners to be given at least a nominal profit share.
- **Third Party Rights:** The Law now permits an LPA to provide certain rights to a third party (non-partner), including setting out how such rights may be enforced and also how they may be varied or extinguished. This allows, for example, a limited partnership's investment manager to enforce any indemnity against the limited partnership directly (even though not a party to the agreement).
- **Safe Harbours:** The Law extends the 'safe-harbours' list, to increase an investor's ability to engage with the day-to-day business of the applicable limited partnership.

UK Economic Crime Act 2022

Earlier this year the UK Government fast tracked the Economic Crime (Transparency and Enforcement) Act 2022. The aim of this Act is to combat financial crime and increase transparency in corporate governance. From a Jersey perspective the most significant development is the creation of the Register of Overseas Entities ("**ROE**"), which launched on 1 August 2022. The new law requires that any non-UK entity (e.g. a Jersey company (even if UK tax resident), a Jersey LLP, a corporate trustee of a Jersey unit trust or a general partner of a Jersey limited partnership) that holds, purchases, or wishes to create a charge over any UK Real Estate must register on the ROE.

Registration requires the entity to declare its beneficial owners who have significant control over the entity and make annual statements to Companies House in the UK declaring any changes to the beneficial ownership. The ROE is a public register, however, individuals' data protection rights are respected and protected personal information will be omitted from the register.

Failure to register or make an annual statement of the beneficial ownership of an entity by its officers affects an entity's ability to hold UK Real Estate and fraudulent statements can lead to criminal prosecution of the entity and its officers.

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Amendments to the Financial Services (Jersey) Law 1998

The JFSC's consultation on the proposal to add "Arranging" as a new class of Investment Business regulated under the Financial Services (Jersey) Law 1998 closed on 21 October 2022.

The proposed amendments aim to enhance Jersey's current regime to provide regulatory protection to retail investors for investment activity brought about by an arranger, consistent with the protection provided in other equivalent jurisdictions. The current proposals involve including the action of "making arrangements for another person to buy, sell, subscribe for or underwrite investments" as a regulated activity. The amendment will potentially affect both registered and unregistered persons and may require an arranger to hold an Investment Business licence.

The JFSC is now considering the feedback provided and will provide an update once this feedback has been considered.

LLC Law

The Limited Liability Companies (Jersey) Law 2018 came into force on 1 September 2022. The Law introduces US-style limited liability companies ("LLC") into Jersey, which provide a familiar structure aimed principally at Jersey's growing US client base. Jersey LLCs combine the limited liability protection of a company with the constitutional flexibility and privacy of a partnership, whilst enabling a choice between the management structure and tax treatment of both.

An LLC consists of one or more members who holds an 'LLC Interest' and who are bound, together with a manager (if any), by an LLC agreement, which is a non-public document. The LLC Law includes several Jersey LLC requirements, for example an LLC must appoint a secretary and must have a registered office in Jersey. Notably, the LLC Law provides that, whilst statutory provisions will provide a default position, an agreed LLC agreement can supersede such positions, for example all debts of the LLC will lie solely with the LLC, unless the parties agree otherwise, pursuant to the LLC agreement.

Consultation on proposals regarding further enhancements to the JFSC's AML/CFT Handbook

On 31 October 2022, the JFSC issued a consultation on proposals to amend the Anti-Money Laundering and Counter-Terrorist Financing ("AML/CFT") Handbook, with the objectives of (a) enhancing the Handbook's existing content to provide further clarity and guidance, and (b) demonstrating the compliance of Jersey's regulatory framework with the recommendations of the Financial Action Task Force.

The proposed amendments comprise the addition of a number of new AML/CFT Codes of Practice and a range of new and expanded guidance notes relating to a number of areas, including:

- corporate governance and business risk assessments;
- identification measures and applying a risk based approach;
- enhanced and simplified customer due diligence ("CDD") measures;
- maintaining and demonstrating effective compliance with sanctions regimes;
- reporting money laundering and terrorist financing activity; and
- screening, awareness and training of employees.

The consultation closes on 13 January 2023.

Follow-on consultation on AML/CFT scope exemptions

As part of the programme of work to implement the FATF recommendations, the JFSC has recently consulted with industry in connection with the implementation of the Proceeds of Crime (Amendment No.6)(Jersey) Law 2022, which is expected to come into force in January 2023.

It is proposed that certain entities, described by the JFSC as PESP (Previously Exempt Supervised Persons), will be brought within the scope of the JFSC's AML/CFT supervisory regime. The consultation proposes a six month transitional period during which all existing and new in scope businesses will be required to make an application for registration with the JFSC.

In scope entities will be able to appoint a "designated service provider" or "DSP" to support them in fulfilling their AML/CFT obligations, including the maintenance of AML policies and procedures and the provision of a Money Laundering Reporting Officer and Money Laundering Compliance Officer. DSPs are expected to have made an application to conduct DSP business before the end of March 2023.

Businesses are encouraged to review their activities, and those of the entities to which they provide services, in order to determine whether any action is required.

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