

Jersey limited partnerships

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Date / [January 2013](#)

The Limited Partnerships (Jersey) Law 1994 (the "Law") governs Jersey limited partnerships.

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 or annual return requirement and a limited partner may have greater involvement in management than in some other jurisdictions.

Since the introduction of the Law, limited partnerships have been used extensively in Jersey. 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.

Limited partnerships should not be confused with limited liability partnerships, which can be established in Jersey pursuant to the Limited Liability Partnerships (Jersey) Law 1997.

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 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") as a precondition of establishment of the limited partnership.

General partners undertake the management of the partnership and, in common with partners in an ordinary or "general" partnership, have an implied authority to bind the partnership when acting within the sphere of the partnership's activities.

Like any partner of an ordinary partnership, a general partner of a limited partnership is liable for all the limited partnership's debts and obligations. 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. Limited partnership interests can in principle be assigned.

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

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The liability of a limited partner to the limited partnership is limited to the difference, if any, between the value of capital that it has contributed and the value it has committed to contribute, and, for a period of six months after receipt by it of a distribution of profits or return of contribution, it may also be liable to repay (with interest) such distributions or returns of contribution if the limited partnership was not solvent when or immediately after they were made. Solvency is determined according to a “cash flow” test.

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 of the limited partnership as though it were for that period a general partner. But a limited partner would be so liable only to a person who transacts with the limited partnership with actual knowledge of the participation of the limited partner in the management of the limited partnership and who then reasonably believed the limited partner to be a general partner.

Furthermore, the Law sets out a non-exhaustive list of activities that a limited partner may carry out that do not constitute participation in the management of the limited partnership. These include, amongst other things:

- being a contractor for or an agent or employee of the limited partnership or of a general partner or 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;
- investigating, reviewing, approving or being advised as to the accounts or affairs of the limited partnership or exercising any right conferred by the Law;
- acting as surety or guarantor for the limited partnership either generally or in respect of specific obligations;
- approving or disapproving an amendment to the partnership agreement; and
- voting on, or otherwise signifying approval or disapproval of, such matters as the dissolution and winding up of the limited partnership, the purchase, sale or other dealing in any asset by or of the limited partnership, the creation or renewal of an obligation by the limited partnership, or a change in the nature of the activities of the limited partnership.

Partnership interest

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”, although it should be noted that this defined term is only used in the context of the solvency test.

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), in any other property, or in 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 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.

Profits including capital profits may be distributed, and capital returned, to the limited partners provided that the partnership is solvent and remains solvent immediately after the distribution or return. Subject to this proviso a limited partner can require the return of its contribution at a time specified in the partnership agreement, or if no such time is specified, in cash on six months’ notice.

“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.

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

Establishment of a limited partnership

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.” and must not be considered by the Registrar to be misleading or undesirable.

A limited partner can, in certain circumstances, lose the benefit of limited liability if his name is included in the partnership name.

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Formation

A declaration is required to be delivered to the Registrar for a partnership to have the status of a limited partnership and this must be signed by each person who will 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, general partner(s) and duration, as the case may be unlimited.

On the registration of a declaration, the Registrar will issue a certificate, which is conclusive evidence of delivery of the declaration.

A one-off fee of £500 is payable on registration. No annual registration fee is payable and there is no requirement to file an annual return.

Regulatory Requirements

Consent under the Control of Borrowing (Jersey) Order 1958 will need to be obtained in order to, amongst other things, create interests in a Jersey limited partnership (except where the limited partnership is an unclassified collective investment fund, which is subject to separate requirements). 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.

Where the limited partnership constitutes a collective investment fund the general partner and certain other functionaries are likely to be required to be registered for the conduct of fund services business under the Financial Services (Jersey) Law, 1998.

Other regulatory consent may be required depending on the activities of the limited partnership and the role of the general partner and (where the limited partnership is a collective investment fund) other functionaries, and we would be pleased to provide advice on any such requirements or any relevant exemptions that may be available.

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" ("KYC"/"CDD") rules. Much of that information will be the same as that required by the Jersey Financial Services Commission as referred to above.

Partnership Agreement

The partnership agreement, which must be in writing, should set out, amongst other things, the respective rights and obligations of the general partner(s) and the limited partner(s). 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.

Public records

The public records of Jersey 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.

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 partnership agreement, and details relating to contributions of limited partners.

These records are private and may only 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.

Dissolution

A limited partnership is dissolved when a statement of dissolution signed by a general partner is filed with the Registrar. It will also be dissolved at the end of its fixed term of existence, or where there is no longer a general partner (for example, on the general partners' dissolution, bankruptcy or withdrawal), although the Law permits continuance of the limited partnership in such circumstances if the limited partners elect one or more new general partners within ninety days.

Continued

In addition, the court has an overriding power to order the dissolution of a limited partnership.

After dissolution of a limited partnership, the affairs of the limited partnership are wound up.

In the winding up, the liabilities of the limited partnership to its limited partners, on account of their contributions or profits, and to its general partner(s), rank behind those of the limited partnership to its other creditors.

Unless otherwise provided by the partnership agreement or otherwise agreed, liabilities to the partners are to be paid in the following order:

- to general partners other than for capital and profits;
- to limited partners in respect of capital and profits; and
- to general partners in respect of capital and profits.

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, but this needs to satisfy the requirements of the Law as well as the Security Interests (Jersey) Law 2012, and be in terms commercially acceptable to the parties.

SLPs and ILPs

New forms of limited partnership, the SLP, with separate legal personality, and the ILP, the incorporated limited partnership, have been introduced, on which please see our separate briefing note.



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