

# GUIDE TO LIMITED PARTNERSHIPS IN JERSEY

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## PREFACE

This Guide provides an outline description of Limited Partnerships in Jersey.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

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## 1. INTRODUCTION

Jersey legislation allows limited partnerships to be established pursuant to the Limited Partnerships (Jersey) Law 1994, as amended (the **LP Law**). The LP Law provides a flexible partnership vehicle for sophisticated or institutional investors who wish to participate in a partnership with the benefit of limited liability but without taking part directly in the management of the partnership affairs, such management being undertaken by the general partner. The Family Limited Partnership (**FLP**) provides a way to ensure that wealth is both protected and easily passed on to the next generation.

Jersey recently approved legislation to allow incorporated limited partnerships and separate limited partnerships to be established pursuant to the Incorporated Limited Partnerships (Jersey) Law 2011 (the **ILP Law**) and the Separate Limited Partnership (Jersey) Law 2011 (the **SLP Law**), respectively.

The ILP Law and the SLP Law are modelled, as closely as possible, on the LP Law, the intention being that the only differences are those necessary to accommodate their respective incorporated status or separate legal personality.

Jersey limited partnerships should not be confused with Jersey limited liability partnerships for which provision is made under the Limited Liability Partnerships (Jersey) Law 1997.

This guide discusses the key features of the Jersey limited partnership and the distinguishing features of the Jersey incorporated limited partnership (an **ILP**) and the Jersey separate limited partnership (an **SLP**).

## 2. LIMITED PARTNERSHIPS

Jersey limited partnerships are commonly used in the following areas:

- as part of international tax planning arrangements utilising the fiscal transparency of the limited partnership concept;
- as vehicles for private equity and venture capital schemes;
- as components in asset protection arrangements; and
- as vehicles for collective investment funds in Jersey.

### 2.1 Formation

Forming a Jersey limited partnership is straightforward. The partnership must comprise at least one general partner (who is liable for all the debts and obligations of the limited partnership) and one limited partner (whose liability is limited to the value of his agreed capital contribution).

The name of a limited partnership must end with the words "Limited Partnership" or either of the abbreviations **LP** or **L.P.**. As a general rule the partnership name should not include the name or a significant part of the name, of a limited partner unless it is also the name or a significant part of the name of a general partner.

There is no upper limit on the number of partners. Limited liability companies can participate either as general or limited partners and there is no partnership law requirement that a general partner be resident or incorporated in Jersey. Recent amendment to the LP Law clarifies that the partnership must consist of two separate persons even though a person may be a partner in two capacities. Depending on the purpose of the limited partnership there may be a regulatory requirement to have a Jersey-based general partner.

A declaration must be filed in Jersey with the Registrar of Limited Partnerships stating the name of the partnership, its registered office address in Jersey and containing details of the general partner and the duration of the partnership.

As a matter of partnership law, there is no requirement to file details of the names of the limited partners or their capital contributions in the partnership declaration. Similarly, the nature of the activities and purpose of the limited partnership do not need to be disclosed in the declaration and there is no requirement to file copies of the partnership agreement. Once again, however, depending upon the nature of the activities of the limited partnership, there may be regulatory requirements to disclose and discuss (on a private basis) with the Jersey Financial Services Commission details about the proposed limited partnership, its activities and the number and status of limited partners.

A registration fee of £500 is payable to the Jersey authorities in respect of each Jersey limited partnership. Only when the Registrar issues the certificate of registration does the association of persons become a limited partnership (i.e. the liability of the partners, other than the general partner, becomes limited).

## 2.2 Principal Features

A Jersey limited partnership must maintain a number of statutory records at its registered office in Jersey including a register of partnership interests. However, the records are private and may only be inspected and copied by partners.

Partnership accounting records must be maintained but there is no requirement for partnership accounts to be audited unless this is required by the partnership agreement. Partnership accounts may be drawn up in any currency. A limited partner's contribution may be in the form of money, other property or services.

A limited partner may assign his interest in the limited partnership either in whole or in part in accordance with the terms of the partnership agreement or with the unanimous consent of all the partners.

Jersey limited partnerships have the capacity to operate on a variable capital basis allowing contributions from limited partners to be increased or returned to limited partners during the continuance of the partnership in accordance with the terms of the partnership agreement. Capital and profit distributions may be made freely in accordance with the terms of the partnership agreement. They are subject only to a simple solvency test with a claw-back mechanism which applies for a period of six months following distribution where a payment is made at a time when the partnership is insolvent.

A limited partner may lose his limited liability status if he participates in the management of the partnership in its dealings with persons who are not partners. However the LP Law provides a non-exhaustive list of "safe-harbour" activities which a limited partner can carry out and which are deemed by statute not to constitute taking part in the management of the partnership.

These include:

- consulting with and advising the general partner on the activities of the partnership;
- approving the purchase or sale by the partnership of any asset; and
- acting as an agent or employee of the limited partnership or the general partner or acting as a director, officer or shareholder of a corporate general partner.

There is no obligation to file annual returns with the Registrar of Limited Partnerships in Jersey and there are no annual fees payable to the Jersey authorities by the limited partnership pursuant to the LP Law.

Limited partnerships may be established with unlimited duration or for a specific term.

Amendments to the LP Law in 2009 allow the Registrar to deregister a limited partnership at the request of its general partners. This enables a limited partnership to cease being governed by the LP

Law (i.e. to become a general partnership or to register under another law or in another jurisdiction), without having to seek dissolution.

### 2.3 Regulatory Requirements

The creation of partnership interests in a Jersey limited partnership requires consent from the Jersey Financial Services Commission (**JFSC**) under the Control of Borrowing (Jersey) Order 1958 as amended. This consent should be obtained before the partnership agreement is signed, because the partnership interests are created on execution of the agreement.

If a Jersey limited partnership is to be established for private business, investment or family purposes and there will be fewer than 15 limited partners who form an existing identifiable group, the registration formalities for the limited partnership, in conjunction with the Registrar of Limited Partnerships in Jersey, can normally be accomplished within a few working days.

If a Jersey limited partnership is to be used as a vehicle for collective investment (including private equity transactions) and will be subject to public offerings or private placement with interested investors, or if it will engage in financial services activities with third parties who are not connected with the founding partners, the regulatory classification and treatment of the partnership and its general partner is dealt with by the Authorisation Division of the JFSC. Appropriate advice should be sought generally in connection with these regulatory matters and the anticipated timetable for the establishment of the partnership.

The general partner may need to adhere to relevant codes of practice and the controls and exemptions under the Financial Services (Jersey) Law 1998 may also be applicable to a limited partnership and its general partner depending on their activities.

### 2.4 Taxation

Jersey limited partnerships are not liable to any Jersey income tax burden and the vehicle is tax transparent (i.e. its activities are treated as being carried on by its partners). Distributions paid out to Jersey resident and non-Jersey resident investors are made on a gross basis without deductions in respect of Jersey tax. Investors will be taxed in accordance with the legislation applicable in the country in which they reside.

## 3. FAMILY LIMITED PARTNERSHIPS

Traditionally wealthy families have used trusts to pass assets down through the generations in a tax efficient and controlled manner, but in more recent times, families have been looking for other structures when passing wealth through generations and this has led to use of the Family Limited Partnership (**FLP**) as an alternative to trusts for family succession purposes.

So far only a small number of FLPs have been established in the UK and offshore for wealth management and estate planning purposes, but, if structured effectively, FLPs can, in certain cases, not only offer similar levels of flexibility to a trust but also mitigate UK inheritance tax liabilities.

An FLP will generally comprise a general partner (usually a company owned by the first generation), which has a small interest but all the management responsibility for the FLP, and limited partners of both the first and subsequent generations who have an economic interest but no management powers. The first generation can give immediate partnership interests to their children, or can set up the partnership and subsequently transfer interests to their children as and when they think the time is right. The children can be brought in as directors of the general partner so that they can gradually participate in the business. FLPs must be carried on with a view to profit, but provided there is active management of the assets and a commercial element to that management, it can be used to hold a wide variety of assets.

FLPs are relatively flexible, by virtue of management powers being within the control of the general partner (so that the GP can control who receives income and capital payments), but it is important to appreciate that they do not necessarily provide the same degree of flexibility as trust structures when it comes to protection of assets on divorce or bankruptcy of the family members.

FLPs are contractual relationships and are operated in accordance with their specific terms. It is possible to draft FLPs to include pre-emptive provisions for divorcing family members or bankrupt partners to be 'bought out' and enable the assets to be retained within the family.

Establishing an FLP in an offshore centre can offer a number of advantages. These include enhanced levels of confidentiality and avoidance of the collective investment schemes rules imposed by the FSA.

Many offshore centres are also experienced in administering structures of this nature and have the appropriate legal, tax and accounting advice readily available to them.

#### 4. INCORPORATED LIMITED PARTNERSHIPS

The summary description of an LP in section 2 above, applies equally to an ILP, save in respect of the differences described.

##### 4.1 Principal Features

The major differences between an ILP and an LP can be summarised as follows:

- an ILP is a body corporate with a legal personality separate from those of its partners;
- the name of an ILP must end with the words "Incorporated Limited Partnership" or any of the abbreviation **I.L.P.**, **ILP**, **Inc. L.P.** or **Inc. LP**;
- an ILP is able to contract in its own name and accordingly hold assets in its own name rather than in the name of its general partner (although, as will often be the case, it will still be possible for the assets of an ILP to be held via a nominee);
- to incorporate an ILP, its general partner has to supply the Registrar with, amongst other things, a statement that its partnership agreement has been executed by the initial partners. This is not the case for an LP and is driven by the need to establish the precise moment at which an ILP comes into existence;
- the general partner's liability for the debts and obligations of the ILP will only arise if the ILP itself defaults;
- as a body corporate, an ILP has perpetual succession in contrast to an LP which, generally, is immediately dissolved on the death, dissolution, bankruptcy or withdrawal from the partnership of the general partner (subject to a statutory power to re-instate). In light of this, the dissolution procedure for an ILP is more formal than that for an LP; and
- a general partner of an ILP owes fiduciary duties to the partnership analogous to those owed by a director to a company. Breaches of these fiduciary duties can be sanctioned or ratified by all the partners in the partnership subject to the partnership continuing to be able to discharge its liabilities as they fall due.

##### 4.2 Taxation and Fees

ILPs receive the same tax treatment in Jersey as LPs.

Where the ILP conducts business in the UK or has UK investors, it is understood the ILP will be transparent for the purposes of United Kingdom income tax or corporation tax on income so that each partner is liable to tax on their share of the ILP income. However, for UK capital gains tax purposes, the ILP will have a tax liability for any capital gains realised by it on the disposal of partnership assets. This is because the ILP will hold property in its own name for the benefit of the partnership and will therefore be seen as non-transparent for the purposes of UK capital gains rules.

As well as an initial registration fee, ILPs are likely to be liable for an annual registration fee, although the sum has not yet been determined.

## 5. SEPARATE LIMITED PARTNERSHIPS

The summary description of an LP in section 2 above, applies equally to an SLP, save in respect of the differences described below.

### 5.1 Principal Features

Whilst the concept of an unincorporated partnership having a separate identity to that of its partners is already familiar to Scots law, it is a welcome addition to Jersey partnership law.

The key distinguishing features of an SLP are as follows:

- an SLP has a separate legal personality but is not a body corporate;
- the name of an SLP must end with the words "Separate Limited Partnership" or the abbreviation **S.L.P.** or **SLP**.
- an SLP can own assets either in its own name or in the name of its general partner;
- as a corollary of the point above, legal proceedings may be commenced against, or brought by, either the SLP in its own name or its general partner; and
- as it is not a body corporate, the mechanics of an SLP's creation and dissolution are not as formal as for an ILP and the general partner does not owe any statutory fiduciary duties to the partnership (although customary law duties will be owed to the partners of the partnership).

### 5.2 Taxation

SLPs receive the same tax treatment in Jersey as LPs.

Where the SLP conducts business in the United Kingdom or has UK investors, it is understood that, for the purposes of UK income tax or corporation tax on income and capital gains tax (following the disposal of assets by the SLP), the SLP will be transparent so that each partner is liable to tax on their share of the SLP income or capital gain, not the SLP.

The ILP Law and the SLP Law add considerably to the attractiveness of Jersey's limited partnership regime and thereby help ensure that Jersey retains its competitive edge in this important area.

For more specific advice on limited partnerships in Jersey, we invite you to contact one of the following:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).