GUIDE

Jersey - Separate Limited Partnerships and Incorporated Limited Partnerships

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A summary of the key features of the 'Separate Limited Partnership' and the 'Incorporated Limited Partnership'.

Separate Limited Partnerships and Incorporated Limited Partnerships are types of limited partnership which, unlike a 'standard' Jersey limited partnership registered under the Limited Partnerships (Jersey) Law 1994 (a '1994 LP'), offer differing degrees of legal personality and can offer alternative tax treatment.

As such, they provide an extra degree of flexibility for clients structuring funds or other investment or holding vehicles in Jersey.

In particular, these limited partnerships provide clients with the opportunity of establishing Jersey limited partnerships with their own legal personality, similar to UK limited partnerships with legal personality, but without certain of the additional accounting and disclosure requirements that face UK 'qualifying partnerships' under the Partnership (Accounts) Regulations 2010.

Also, to the extent that regulation such as the EU's Alternative Investment Fund Manager's Directive ('AIFMD') encourages fund promoters to consider the merits of constituting their funds as Jersey limited partnerships rather than EU domiciled vehicles, the varied range of available limited partnership structures in Jersey may prove helpful.

Historic position and features of 1994 Law Limited Partnerships

Before the introduction of Separate Limited Partnerships and Incorporated Limited Partnerships, a Jersey partnership could take the form of:

- a general partnership governed by Jersey customary law (in which all partners share unlimited liability);
- a 1994 LP, registered under the Limited Partnerships (Jersey) Law 1994 (the '1994 LP Law'); or
- a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997.

With over 3,000 having been registered in Jersey, 1994 LPs are frequently used in funds structures but they are also used in other transactions where tax transparency is required.

A 1994 LP does not have separate legal personality and must contract through its general partner (usually a Jersey body corporate) which has unlimited liability for the debts of the partnership. The limited partners of a 1994 LP will generally have limited liability (subject to certain conditions requiring the limited partners to refrain from participating in the management of the partnership).

The general partner of a 1994 LP is deemed to hold the property of the partnership in its own name, as an asset of the partnership, in accordance with the partnership agreement.

Limited partnerships with separate legal personality have become increasingly popular, however, particularly with fund promoters seeking, amongst other things, to have assets of the partnership recorded in the name of the partnership.

Following extensive consultation with industry, a demand for two models was identified, which crystallised into two laws being enacted in 2011 enabling the creation of two additional types of limited partnership, Separate Limited Partnerships ('SLPs') under the Separate Limited Partnerships (Jersey) Law 2011 (the 'SLP Law') and Incorporated Limited Partnerships ('ILPs') under the Incorporated Limited Partnerships (Jersey) Law 2011 (the 'ILP Law').

Those completely independent statutes were modelled on the 1994 LP Law, which has long been considered internationally to be appealingly flexible and clearly drafted.

Separate Limited Partnerships

The principal features of the SLP regime are summarised below:

- as the name suggests, an SLP has separate legal personality and is therefore a separate legal entity from its members;
- an SLP is unincorporated (ie. it is not a body corporate);
- an SLP has unlimited capacity;
- the name of an SLP must end with the words 'Separate Limited Partnership' or either the abbreviations 'S.L.P.' and 'SLP';
- similar to a 1994 LP, an SLP still requires a general partner. The general partner retains unlimited liability for the debts of the SLP, whilst the limited partners retain the benefit of limited liability (subject to largely the same conditions as set out in the 1994 LP Law);
- property of an SLP may be held in the name of the SLP itself or in the name of the general partner and shall be held for the benefit of the partners in accordance with the partnership agreement; and
- an SLP or its general partner is able to instigate legal proceedings and legal proceedings by or against an SLP may be instigated by or against the SLP or its general partner.

Otherwise, the SLP Law is closely modelled on the 1994 LP Law.

Incorporated Limited Partnerships

The principal features of the ILP regime are summarised below:

- similar to the SLP, an ILP has separate legal personality, however as its name suggests, an ILP is incorporated (ie. it is a body corporate);
- the partnership agreement for an ILP has to be entered into before the ILP can be incorporated;
- despite its incorporated status, an ILP still retains the requirement of having a general partner. The general partner of the ILP has unlimited liability for the debts of the partnership and the limited partners retain the benefit of limited liability (subject to largely the same conditions as set out in the 1994 LP Law);
- an ILP has unlimited capacity;
- the name of an ILP must end with the words 'Incorporated Limited Partnership' or any of the abbreviations 'I.L.P.', 'ILP', 'Inc. L.P.' and 'Inc LP';
- an ILP will have perpetual succession; due to its incorporated status, the dissolution of an ILP requires a more formal process than the dissolution of an unincorporated limited partnership. The statutory winding up and dissolution provisions are governed under separate regulations based on the equivalent Jersey company law provisions;
- an ILP owns its property in its own name and contracts in its own name;
- an ILP is able to sue and be sued in its own name;
- the ILP Law provides that the general partner of an ILP acts as an agent of the ILP;
- certain statutory obligations are imposed on the general partner of an ILP, including the duty to act honestly and in good faith with a view to the best interests of the ILP. A breach of this duty may be ratified by all of the partners of the ILP, subject to a solvency test. Whilst Jersey customary law has generally been understood to include principles of agency and fiduciary duties within the relationships between a general partner and the limited partners, it is unique to ILPs for these concepts to be enshrined within statute and for this duty to be owed directly to the ILP, rather than the limited partners – much in the same way as a director of a company owes its duty to the company rather than the shareholders. Otherwise, the ILP Law retains many of the provisions of the 1994 LP Law.

Potential advantages over popular UK limited partnership forms

Wider scope of business

Whilst a Scottish limited partnership must be 'between persons carrying on business with a view to profit', the SLP law provides more flexibility and permits SLPs to be established for any lawful purpose.

Investor discretion

The register of limited partners for a UK limited partnership is a publicly available document, whereas the register of a Jersey limited partnership is not publicly available.

New UK accounting rules not applicable

The Partnership (Accounts) Regulations 2010 oblige certain UK 'qualifying partnerships' to prepare and file accounts which are available to the public. Such regulations are not applicable to Jersey limited partnerships.

Tax treatment (in Jersey)

The tax treatment in Jersey for SLPs and ILPs is the same as for a 1994 LP.

A 1994 LP itself is not assessed for Jersey income tax in its own name and is tax transparent. Jersey resident partners are charged Jersey income tax on their share of income arising from the 1994 LP. Non-Jersey resident partners are only subject to Jersey income tax on Jersey source-income other than bank and building society deposit interest, which generally results in no Jersey tax being paid by overseas partners unless the 1994 LP is trading in Jersey or is in receipt of Jersey source investment income (other than bank and building society deposit interest).

The tax treatment afforded to the different types of Jersey partnerships and their partners may differ in other jurisdictions.

Tax treatment (in the UK)

Recipients of this briefing must obtain their own UK tax advice but we currently understand that both SLPs and ILPs are regarded as transparent for the purposes of UK income tax and UK corporation tax on income.

We also currently understand that SLPs are regarded as tax transparent for purposes of UK capital gains tax, but that ILPs are not (unless relevant elections can be made).

Expert legal advice is on hand

Mourant's award winning legal team offers Jersey legal advice on the establishment of Jersey partnerships as well as ongoing advice in relation to fund structures.

This briefing can only provide a general review of this area. Legal and tax advice should be taken with regard to individual circumstances.

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