

Migration of foreign limited partnerships into Jersey

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The Limited Partnerships (Continuance) (Jersey) Regulations 2020 (the **Regulations**) permit a foreign limited partnership to continue in Jersey as a limited partnership under the Limited Partnerships (Jersey) Law 1994 (the **LP Law**), provided certain conditions are met. The Jersey Financial Services Commission (**JFSC**) has published related guidance on the application process and other factors.

This guide summarises the process for such a continuance (also commonly referred to as 'migration'), together with the eligibility criteria and other key considerations from a Jersey perspective.

1 Eligibility of a foreign limited partnership to migrate to Jersey

An **eligible foreign limited partnership** (being a limited partnership, without legal personality, formed under the law of a jurisdiction outside Jersey) may seek to continue in Jersey if the law of the jurisdiction in which it is formed does not prohibit this, and provided that:

- the limited partnership is not being wound up;
- no receiver or manager has been appointed in relation to any of the assets of the limited partnership;
- no application has been made to a court in another jurisdiction (and not determined) for the winding up of the limited partnership or for the limited partnership to be subject to equivalent insolvency proceedings; and
- the limited partnership has not been deregistered for a purpose other than continuing as a limited partnership within Jersey in accordance with the Regulations.

2 Instruct Jersey (and relevant foreign) counsel

Mourant's Jersey Funds team will be happy to assist with the application of a continuance of a foreign limited partnership into Jersey and advise on the process and documentation required (including the considerations below). Where the foreign limited partnership is formed in Cayman, BVI or Guernsey we will also be happy to introduce and work seamlessly alongside our colleagues in our sister offices in terms of the limited partnership's migration out of that jurisdiction.

Please reach out to [Ben Robins](#) or any of the contacts listed below for assistance.

3 Considerations prior to making an application

Regulatory status in Jersey

In addition to the continuance process itself, it will be important to identify whether a regulatory regime will be applicable to the limited partnership in Jersey and whether any additional regulatory applications are required in parallel with the continuance application.

Non-fund vehicles

Limited partnerships with a single investor, which hold a single investment or which are joint ventures are generally not treated as funds for Jersey regulatory purposes. There are similar dispensations for certain

employee incentive and family arrangements. Such partnerships will generally only require the basic consent issued by the Registry upon continuance.

Such foreign limited partnerships may become subject to fund regulation in Jersey if they fall within the definition of an "AIF" and have been marketed in the EEA for AIFMD purposes prior to or following their continuance in Jersey (see AIFMD below).

Fund limited partnership regimes

For foreign fund limited partnerships, with multiple investments and external investors, upon continuance into Jersey, there is a range of fund regulatory regimes potentially available, offering appropriate levels of regulation to suit different types of funds and investor. These range from more highly-regulated Expert or Eligible Investor Funds, which may be offered to more than 50 investors, to more lightly-regulated Jersey Private Funds, which may only be offered to up to 50 investors, through to Unregulated Funds which, subject to certain criteria, may opt out of fund regulation in Jersey.

In broad terms, a **public fund** (such as an Expert or Eligible Investor Fund), where the number of offers or investors exceeds 50, will require an application to the JFSC for an appropriate permit or certificate under the Collective Investment Funds (Jersey) Law 1988. The exception is an Unregulated Fund which, as its name suggests, requires only a notification to the JFSC and is not subject to any ongoing regulation if it satisfies certain criteria and is not actively marketed in the EEA (although the consent of the JFSC in principle is required prior to the continuance of a foreign fund limited partnership in Jersey as an Unregulated Fund – see below).

A **Jersey Private Fund** (a streamlined lighter-touch regime for funds limited to 50 offers/investors) requires a consent from the JFSC under the Control of Borrowing (Jersey) Order 1958 (**COBO**) which requires compliance with the Jersey Private Fund guide published by the JFSC (the **JPF Guide**).

Please see our [Introduction to Jersey Investment Funds](#) for further details of the fund regimes available in Jersey, or our fund-specific guides on [Jersey Expert Funds](#), [Eligible Investor Funds](#), [Jersey Unregulated Funds](#), and [Jersey Private Funds](#).

Depending on the applicable regime, additional applications may need to be made to the JFSC together with the continuance application. The JFSC has indicated that its usual fast-track fund approval timescales will not apply in the context of limited partnership continuances. As such, it will be important to prepare and submit any such fund applications in good time.

A partnership may be regulated as a fund in its current jurisdiction, but not in Jersey (or vice versa). The JFSC will need to understand both the current and the proposed Jersey regulatory status of the limited partnership when considering the continuance application. Where the migration would result in a limited partnership which is currently regulated becoming an unregulated vehicle (ie. a non-fund, or an Unregulated Fund) in Jersey, and in any case where the limited partnership is, on migration, proposed to be an Unregulated Fund, the JFSC requires an application for '**in principle**' consent to be made at an early stage so that they can consider all relevant matters with the applicant before the continuance application is filed.

Migration of general partner and other functionaries

If the foreign limited partnership has a foreign corporate general partner which also wishes to migrate to Jersey, the Companies (Jersey) Law 1991 sets out how a non-Jersey company may continue into Jersey. This requires a separate application to the JFSC. Our guide on [Application for Migration into Jersey under the Companies \(Jersey\) Law 1991](#) sets out the process and documentary requirements for the continuance of a foreign body corporate in Jersey.

If the general partner or other functionaries do wish to migrate, the JFSC should be advised as part of the application process. The two processes can be conducted side-by-side, and Mourant will co-ordinate this with the appropriate JFSC departments.

It is not essential in all cases that a Jersey limited partnership has a Jersey general partner. In some cases, however, where the limited partnership is a fund the applicable fund regime (such as for Unregulated Funds and Expert Funds) does require this. In any event we anticipate there may be some operational

advantages and synergies in the general partner (and potentially any other functionaries) migrating to Jersey alongside the limited partnership itself.

A migrating general partner will also need to consider its own regulatory status in Jersey. Depending on the regulatory status of the limited partnership (discussed above), a general partner may need to register with (and be regulated by) the JFSC in the conduct of **fund services business**, particularly if acting for a public fund. If so, its 'principal' or 'key' persons – for instance, directors or other controllers, including individual owners holding 10% or greater interest in the general partner – will need to submit their own personal applications for approval by the JFSC.

Alternatively, if acting for a non-fund vehicle, a Jersey Private Fund or an Unregulated Fund, regulatory exemptions are likely to be available for the general partner.

AIFMD

Where the migrating limited partnership is an "AIF" and its interests have already been or will be marketed in the EEA for AIFMD purposes, the limited partnership will be subject to the Jersey AIFMD regime and it, and any migrating general partner, will need to make the appropriate applications.

Such limited partnerships will require a certificate pursuant to the Alternative Investment Funds (Jersey) Regulations 2012. The general partner (if acting as the AIFM/manager for AIFMD purposes) may need to register to conduct AIF services business under the Financial Services (Jersey) Law 1998. A lighter-touch application regime is available for 'sub-threshold' AIFMs.

Under AIFMD Jersey funds may currently be marketed to professional investors in applicable EEA jurisdictions under national private placement rules (**NPPRs**). Bear in mind that, in addition to the above Jersey applications, the migration of the limited partnership (and, if applicable, the general partner) may require updated local NPPR filings to be made where the limited partnership is being marketed in the EEA. Appropriate advice should be sought from counsel in any relevant EEA jurisdictions.

Unregulated Funds may not be marketed in the EEA.

Investor consent and LPA amendments

We expect that migrating limited partnerships are likely to need to seek investor approval to the continuance and that certain amendments will need to be made to the limited partnership agreement (**LPA**) (including to change the governing law and to make any conforming changes to comply with the LP Law). Investor consent may be required for such LPA changes.

Depending on the applicable regulatory regime and/or any exemptions to be relied on by any Jersey functionaries, each investor may also need to provide confirmations of their status (for instance as 'professional', 'eligible' or 'expert' investors) and/or acknowledge prescribed investment warnings. These may be dealt with at the same time as obtaining necessary investor consents.

Fund offer document

If a migrating fund limited partnership is still making offers, its prospectus (if any) will need to be updated (including to comply with any applicable Jersey requirements) and, in the case of a regulated **public fund** which is still making offers, an updated prospectus will need to be filed with the JFSC (and any trustee, custodian or depositary) prior to its issue by the Jersey limited partnership.

Identify a Jersey regulated administrator

A regulated administrator/incorporation agent in Jersey will need to be appointed to provide the limited partnership with a Jersey registered office and other administration services (and likewise for the general partner, if this is also to be migrated to Jersey). The administrator's role will also tend to include assistance with Jersey's anti-money laundering and countering the financing of terrorism (**AML/CFT**) requirements, discussed further below, and other relevant statutory and regulatory matters (such as maintaining policies and procedures for compliance with any applicable regulatory codes of practice or, if the limited partnership is to be regulated as a Jersey Private Fund, acting as the 'designated service provider' under the JPF Guide.

The administrator will need to review and/or sign certain of the JFSC application forms in connection with the continuance, so should be considered and engaged in advance of the continuance process. The administrator will also need to comply with its own AML/CFT requirements and, as discussed below, it may be necessary for additional documentation to be provided prior to migration in order to satisfy the applicable requirements.

The JFSC has indicated that it views "registered office only" business as potentially high risk, and that Jersey based service providers should have regard to this when providing services to a migrating limited partnership which is only seeking that limited service.

The JFSC's Sound Business Practice Policy (SBPP)

The continuance application must detail the intended activity of the limited partnership (and any migrating general partner). The SBPP sets out certain activities which the JFSC views as higher risk or sensitive. If one of these applies, the JFSC should be contacted in advance of submitting the application to establish what additional information may be required and likely processing timeframe.

Economic Substance

A migrating general partner of a fund limited partnership, if it is to be tax-resident in Jersey (and unless a separate manager is appointed to the fund limited partnership), will be subject to Jersey's formal economic substance requirements as an entity conducting 'fund management business' (unless the relevant limited partnership is not a fund for Jersey purposes).

The company's operation and board composition should be evaluated in light of these requirements in case any changes are required to comply with the requirements (which are set out in more detail in our guide on [Economic Substance Requirements for Jersey Companies](#)).

For instance, these include that the company should be directed and managed in Jersey in relation to its fund management activity – board meetings should be held in Jersey at an adequate frequency, with a quorum of directors physically present in the island, and a majority present in Jersey where decisions are taken that relate to the prescribed 'core income generating activity' of the company. It may be necessary to appoint additional or replacement Jersey-resident directors to ensure that these criteria can be met.

4 Continuance application steps

Mourant's Jersey Funds team will be happy to assist with the following steps and documentation, as necessary:

Name reservations

The intended name of the limited partnership (and the general partner, if also migrating to Jersey) should be reserved in advance of the application being made. Applications are made via the Easy Company Registry portal on the JFSC website – we (or the Jersey administrator) will be able to assist with this. Confirmation of reservation or refusal will generally be provided within two working days.

Preliminary

As discussed above, the JFSC must first be approached in relation to any matters requiring 'in principle' approval such as applications to continue as an Unregulated Fund. In addition, the JFSC should be approached in any instances where the particular requirements of the JFSC's guidance may not be met in relation to the proposed continuance.

How to apply

LP3C form

The continuance application is made via an LP3C form, submitted to the JFSC via the Easy Company Registry portal or to the Registry itself. The LP3C form should be signed by the general partner, but may be submitted by the Jersey administrator alongside the P2 form referred to below. The LP3C form doubles as a "declaration of limited partnership" for the purposes of the LP Law.

If it is not possible to provide 'wet-ink' signatures, the JFSC may accept a digital or scanned signature or an email confirming that a person agrees to the signing of a document.

The form requires the following details to be provided in respect of the limited partnership:

- its current name (and any proposed new name);
- its current jurisdiction of establishment and registration number;
- its partnership's term (or, if for an unlimited duration, that fact);
- its partnership's proposed registered office address in Jersey; and
- details of any general partner.

An email address must also be provided for the appropriate official or public body in the limited partnership's current jurisdiction of establishment to whom an electronic copy of the certificate of continuance should be sent.

The form also requires the general partner to confirm that the requirements for the limited partnership to migrate to Jersey, set out in Section 1 of this Guide, are met, and that:

- the limited partnership is solvent;
- the limited partnership will not have legal personality upon its continuance in Jersey;
- the general partner has approved the application to continue the limited partnership in Jersey;
- any authorisation required (if any) under the law of the limited partnership's current jurisdiction has been obtained;
- the limited partnership has applied to the Registrar for registration as a limited partnership under the LP Law (this is achieved by virtue of the LP3C form itself); and
- the limited partnership has applied to the JFSC for consent in respect of the creation of partnership interests under Article 10 of COBO.

P2 form

The application for this COBO consent is made by simultaneously submitting a P2 form. For the avoidance of doubt, this is a necessary part of the continuance process itself, and applies irrespective of any separate fund regulatory applications that are made.

The P2 form is to be submitted by the Jersey administrator and requires, among other things, confirmation of the limited partnership's activities (including with regard to the SBPP) and details of the individuals who ultimately own and control the vehicle.

Where not included in the LP3C form, the "Further Information" section in the P2 form must include:

- details of activities undertaken to date by the limited partnership;
- details of whether the limited partnership has ever been, or is required to have been, regulated in the jurisdiction in which it was formed and if so, the name of the regulator and the details and status of that regulation;
- confirmation that the limited partnership is of good regulatory standing and not currently subject to any regulatory proceedings elsewhere;
- the rationale for the migration; and
- confirmation that all investors of the limited partnership have been informed and, where necessary, have not objected to the migration.

Fee and additional supporting documents

The prescribed fee of £605 must accompany the application, along with a certified copy of the limited partnership's certificate of formation (or another document evidencing its formation). The JFSC may require further documents or information to be provided.

Offences in relation to a continuance

Any person who, in connection with an application, knowingly or recklessly provides to the JFSC any false, misleading or deceptive material or any document containing such information will be guilty of an offence and is liable to imprisonment for two years and a fine.

5 Determination of applications and appeal

The JFSC will inform the applicant once a decision has been made. The application will not be granted until all consents required to permit the activities of the limited partnership to continue into Jersey (eg any relevant fund regulatory approvals) are also ready to be granted by the JFSC.

The JFSC has the right to refuse an application if they are of the opinion that it would be contrary to public interest. Upon any refusal, the applicant may request a statement in writing of the reasons for the decision, which the JFSC must provide within 14 days of such request.

The applicant has the right to appeal to the Royal Court of Jersey against a refused application by the JFSC on the ground that the decision was unreasonable having regard to all circumstances of the case. An appeal must be lodged with the Royal Court within 28 days of being informed of the refusal. On hearing the appeal, the Royal Court may confirm or reverse the JFSC's decision. It may also make an order for costs of the appeal.

6 Issue of certificate of continuance

On accepting an application, the JFSC must provide the Registrar of Limited Partnerships with all documents accompanying the application. The Registrar will then register the eligible foreign limited partnership as a limited partnership under the LP Law, and issue a certificate of continuance. An electronic copy of this certificate will also be sent to the appropriate official or public body in the jurisdiction from which the limited partnership is migrating, using the email address supplied in the LP3C form.

A certificate of continuance signed and sealed by the Registrar is conclusive evidence that the limited partnership has complied with the Regulations and has continued as a limited partnership in Jersey under the name specified in the application from the date specified in the certificate of continuance.

Consent will also be issued under COBO in respect of the creation of interests in the limited partnership. For this purpose, interests in the limited partnership in existence immediately before issue of the certificate of continuance are taken to have been created on the date specified in the certificate of continuance. This consent will qualify as a 'relevant consent' for the purposes of certain exemptions under the Financial Services (Jersey) Law 1998 available to the general partner or other functionaries to limited partnerships which propose to continue as Jersey Private Funds or non-fund vehicles.

7 Effect of continuance

With effect from the date of issue of the certificate of continuance, the limited partnership is not to be treated as a limited partnership formed under the laws of a jurisdiction outside Jersey; and all assets and other property (including all choses in action and any right to make capital calls of the limited partnership) previously held or deemed to be held or acquired by or on behalf of the limited partnership are taken to be the property of the Jersey limited partnership held under Article 11(2) of the LP Law.

The continuance of a limited partnership does not create a new limited partnership or affect any partnership interest. Nor does it affect any act done before the continuance, or the rights, powers, authorities, functions or obligations of the limited partnership, any partner or any other person existing before its continuance. In particular, a continuance will not release a limited partnership (or any partner or other person in respect of the limited partnership) from any judgment, ruling, order, claim, debt or liability (whether existing or future). Any pending civil or criminal proceedings by or against a limited partnership, any partner or other person will not be affected.

8 Ongoing requirements

AML/CFT obligations

Jersey funds and fund service providers are required to maintain appropriate AML/CFT policies and procedures and to conduct and monitor assessments of the AML/CFT risks arising from their business and their customers.

Fund limited partnerships (and regulated general partners) are also required to appoint named individuals to act as the money laundering compliance officer (**MLCO**) and money laundering reporting officer (**MLRO**). These officers will generally be provided by the Jersey regulated administrator of the limited partnership. The role of the MLCO is to oversee the AML/CFT compliance function and ensure the effectiveness of the fund's AML/CFT compliance function and ensure the effectiveness of its systems, policies and procedures. The MLRO is the point of contact for internal reports of suspicious activity and will in turn report the same to the competent authorities.

Limited partnerships migrating to Jersey should be aware that the Jersey requirements may differ from those in the limited partnership's current jurisdiction. Any additional Jersey requirements will need to be addressed at the outset or, in low-risk cases (where any risk is effectively managed) and if necessary so as not to interrupt the normal course of business, as reasonably practicable thereafter.

Economic Substance

As set out in Section 3 above, a migrating general partner may be subject to formal economic substance requirements in Jersey. Our guide on [Economic Substance Requirements for Jersey Companies](#) outlines the ongoing requirements and reporting obligations under the economic substance regime.

Automatic exchange of information

Jersey has automatic exchange of information regimes in place for reporting under the US Foreign Account Tax Compliance Act and the OECD's common reporting standard and has approved legislation to introduce mandatory disclosure rules based on the OECD model which will require entities to provide certain information about reportable structures to the Comptroller of Revenue in Jersey.

Data protection

Jersey has enacted legislation in similar terms to the EU's General Data Protection Regulation. Jersey administrators and any migrating general partners or other functionaries will be subject to the provisions of the Data Protection (Jersey) Law 2018, which include the requirement to register with the Information Commissioner prior to processing or controlling the processing of personal data. Mourant's specialist data protection team are able to advise on compliance with this law.

Contacts

A list of contacts in Mourant's Jersey Funds team can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. © 2020 MOURANT OZANNES ALL RIGHTS RESERVED