

UPDATE

New enhancements to the Jersey Limited Partnerships Law

Update prepared by the Funds team, Jersey

On 27 April 2022, the States of Jersey adopted the Limited Partnerships (Amendment No. 2) (Jersey) Law (the **Draft Law**) with a view to the amendments coming into force in autumn 2022.

The Draft Law introduces some welcome enhancements and further flexibility into the Limited Partnerships (Jersey) Law 1994 (the **LP Law**) and sets out a new statutory process for terminating a limited partnership (an **LP**) in Jersey.

Enhancements to the LP Law

The Draft Law will make a number of useful enhancements to the LP Law 'to improve its flexibility, clarity and to reflect modern improvements made to equivalent laws in competitor jurisdictions'¹, including the following:

- Expanded **safe harbour** activities for limited partners will include: being a partner in a partnership that itself is a general partner, granting loans to the LP, calling partners' meetings, enforcing a right under the limited partnership agreement (**LPA**), contracting with other partners, taking part in decisions regarding changes in the persons responsible for the day-to-day management of the LP and acting as a member of a board or committee of partners of the LP or selecting a representative to serve on that board or committee.
- A clarification that **committee members (whether or not they are limited partners in the LP) owe no duty to the LP, its partners, other committee members and any third party** except as expressly provided for in the LPA or the terms of their appointment.
- Introduction of a **nominated person who the general partner (the GP) may authorise to carry out its statutory duties in notifying and providing documents** under the LP Law. The GP will remain liable for such duties, but this administrative support should aid the smooth functioning of the LP.
- A clarification that **the purpose of an LP does not need to be for profit**; the LP Law was previously silent on this matter, and so this amendment expressly overrides the customary law position that the purpose of the LP must be with a view to profit. This is helpful for those partnership structures whose purpose is not profit making.
- **Removing the requirement to specify the term of the LP in the declaration (LP3)** filed with the Registrar on establishment of an LP. This will avoid the need to file a change of particulars (LP4) with the Registrar upon entry into an amended and restated LPA that alters the term of an LP. In practical terms, this step is easily overlooked by GPs and so the change will avoid inadvertent default.
- An **LP's name may include the name of partners** provided that it is not undesirable or likely to mislead.
- New flexibility to allow the LPA to **limit or restrict limited partners' statutory right to inspect or copy the records of the LP** kept by the GP at the registered office. This statutory right will be a welcome

¹ Paragraph 3 of the Report prefacing the Draft Law.

development that helps protect the LP's commercially sensitive and private information, particularly for carried interest partnerships.

- **Removing certain statutory restrictions on the GP's authority to act** and so providing greater flexibility via the LPA.
- New flexibility to allow the LPA to provide that a limited partner may have no rights to receive a return of contributions or profits. The customary law position for partnerships has required all partners to receive a share of profits. This is a helpful clarification as the preference is often for the GP to receive a fixed fee, rather than a profit share.
- Permitting the LPA to provide for **enforceable third party rights** for persons who are not partners.
- Clarifying that any penalty or sanction under the LPA (such as forfeiture) for non-compliance with its terms is enforceable.

New statutory process for dissolving an LP

The Draft Law creates a new statutory process for dissolving an LP. Dissolution under the Draft Law is now the final act of the LP rather than the act which places it into winding up. Accordingly, the winding up of an LP will occur before dissolution and, once winding up is complete; the request to cancel the registration of the LP is then filed with the Jersey Registrar of Limited Partnerships. The dissolution of the LP takes effect upon the registration of the cancellation of the registration of the LP by the Registrar.

An LP may be wound up by the GP of an LP or persons authorised under its LPA. The death, bankruptcy, dissolution, etc of the GP will now trigger the winding up of the LP, rather than its immediate dissolution. In stressed circumstances, this provides some time for matters to be resolved and potentially to avoid dissolution.

A liquidator may now be appointed to carry out the winding up of an LP on the authority of the GP, the LP Law or the LPA.

The Draft Law provides that an LP is not required to be wound up if, within 90 days of the commencement of the winding up, the limited partners (either unanimously or as provided for under the LPA) elect one or more GPs to take over and continue the activities of the LP.

There is also a new power for the Court to order the winding up of an LP if its activities are bringing Jersey into disrepute. It is an extraordinary power but one which will strengthen the Registrar's enforcement powers.

Upon completion of the winding up of an LP, the cancellation of an LP's registration and the dissolution of an LP may be made by the GP, or a person authorised by the LPA or the Court, requesting the same to the Registrar.

Overall, the new process will bring Jersey's LP Law in line with certain competitor jurisdictions and allows an LP's affairs to be wound down and managed in an orderly manner prior to dissolution.

Next steps

The publication of the Draft Law represents a welcome development for the funds industry in Jersey.

The Draft Law will now be placed before the Privy Council for approval and then registered in the Royal Court. It is expected that the Draft Law will come into force in autumn 2022.

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