

Pushing The Limits

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Earlier this year the Limited Partnership (Amendment) (Jersey) Law came into force. This has meant that the stage is set for the introduction of Incorporated Limited Partnerships and Separate Limited Partnership laws in the near future.

In the off shore context, limited partnerships have four main uses:

1. as part of international tax planning arrangements utilising the fiscal transparency of the limited partnership concept;
2. as vehicles for private equity and venture capital schemes;
3. as components in asset protection arrangements; and
4. perhaps most importantly, as vehicles for collective investment schemes.

On 1 March this year the **Limited Partnerships (Amendment) (Jersey) Law 2009** (the

“Amendment Law”) came into force. The Amendment Law amended the **Limited Partnership (Jersey) Law 1994** (the “LP Law”) which governs the setting up, conduct and dissolution of traditional limited partnerships (“LPs”). Whilst the amendments to the LP Law are mostly minor, two are worthy of note:

1. powers are conferred on the registrar to deal with issues arising in relation to a limited partnership’s registered office (namely, the power to refuse to register a declaration of limited partnership unless satisfied that the occupier of the relevant premises has authorised their use as such; the power to require that a limited partnership nominates a new registered office if not satisfied that the occupier of the premises currently nominated has consented to their use as such and the power to refuse to register a change of registered office unless satisfied that the occupier of the newly nominated premises has consented); and

2. a limited partnership can now be de-registered without the partnership necessarily being terminated. This is intended to assist limited partnerships wishing either to re-register as limited partnerships in other jurisdictions or to convert to ordinary (non-limited) partnerships.

Perhaps most importantly, now that the LP Law has been amended, the legislative stage is set for the introduction of two further, and closely related, laws: the **Incorporated Limited Partnerships (Jersey) Law 200-** (the “ILP Law”) and the **Separate Limited Partnership (Jersey) Law 200-** (the “SLP Law”).

The first point to note about both the ILP Law and the SLP Law is that they have been modelled, as closely as possible, on the amended LP Law, the intention being that the only differences should be those necessary to accommodate their respective incorporated status or separate legal personality.

INCORPORATED LIMITED PARTNERSHIPS

The major differences between an incorporated limited partnership (an “ILP”) and an LP can be summarised as follows:

1. an ILP will be a body corporate with a legal personality separate from those of its partners;
2. an ILP can 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);
3. to incorporate an ILP, its general partner will have 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;

4. as a body corporate, an ILP will have perpetual succession in contrast to an LP which, in general terms, is immediately dissolved on the death, dissolution, bankruptcy or withdrawal from the partnership of the general partner. In light of this, the dissolution procedure for an ILP will be more formal than that for an LP; and
5. a general partner of an ILP will owe 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.

SEPARATE LIMITED PARTNERSHIPS

Whilst the concept of an unincorporated partnership having a separate identity to that of its partners is already familiar to Scots law, it will be a welcome addition to Jersey partnership law. The key distinguishing features of a separate limited partnership (an “SLP”) will be as follows:

1. an SLP will have a separate legal personality but will not be a body corporate;
2. an SLP will be able to own assets either in its own name or in the name of its general partner;
3. as a corollary of 2. above, legal proceedings may be commenced against, or brought by, either the SLP in its own name or its general partner; and
4. as it is not a body corporate, the mechanics of an SLP’s creation and dissolution will not be as formal as for an ILP and the general partner will not owe any fiduciary duties to the partnership.

The ILP Law is expected to come into force later this year with the SLP Law following shortly thereafter. Once in force the new laws will add considerably to the attractiveness of Jersey’s limited

partnership regime and thereby help ensure that the Island retains its competitive edge in this important area.

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