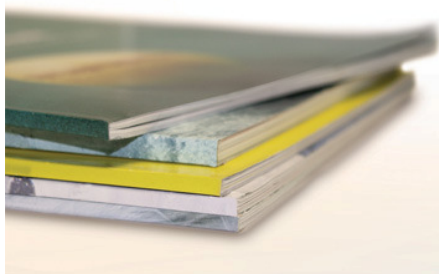


Jersey Partnerships

As originally appeared in Finance - Jersey/IOM/Guernsey Summer 2010



BY ALASTAIR DRUMMOND

Jersey currently has three varieties of partnership; general, limited and limited liability with two more (incorporated limited and separate limited) likely to become available in early 2011. The following is a brief review of the key features of each.

General Partnerships

General (or traditional) partnerships are creatures of Jersey's customary law but are heavily influenced by English partnership law.

The Jersey case of **Bennett v. Lincoln** (2005 JLR 125, at para 21), sets out the defining characteristics of a Jersey general partnership:

- “(i) That each of the parties brings or obliges itself to bring something to the arrangement;*
- (ii) that the arrangement is established for the common benefit of each of the parties;*
- (iii) that the parties propose, by the arrangement, to make a gain or profit in which each of the*

contracting parties can hope to have a share of what it has brought to the arrangement; and

- (iv) that the business which is the object of the arrangement and for which the contracting parties entered into the arrangement should be something lawful and that the profit which they propose to withdraw should be an honest profit.”*

It is irrelevant whether or not parties describe their relationship as a partnership. The liability of the partners is unlimited.

Limited Partnerships

Limited partnerships were introduced into Jersey law by the **Limited Partnerships (Jersey) Law 1994** (the “LP Law”).

Jersey limited partnerships are not bodies corporate and have no legal personality.

Limited partnerships have two types of partners: limited partners and general partners and they must

have at least one of each. The status is conferred by filing a declaration of limited partnership with the registrar of limited partnerships.

A general partner's liability is unlimited, whereas a limited partner's liability is limited to the amount of its capital contribution provided it does not take part in the management of the partnership. A limited partner can be consulted by and advise its general partner without being deemed to be taking part in the management of the limited partnership.

Amendments to the LP Law were introduced by the **Limited Partnerships (Amendment) (Jersey) Law 2009**. The amendments were mostly minor. One to note however, is that now a general partner can apply to the registrar to be removed from register of limited partnerships without the partnership being formally dissolved. Previously, a declaration of limited partnership could only be cancelled by filing a statement that the limited partnership had been dissolved.

Incorporated Limited Partnerships

The **Incorporated Limited Partnership (Jersey) Law 201-** (the "ILP Law"), is expected to come into force early next year. An ILP will be the same as a traditional limited partnership but will be a body corporate with a legal personality separate from those of its partners.

The ILP Law takes its starting point from the LP Law and amends it only so far as is necessary to reflect an ILP's corporate status.

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. It follows therefore that an ILP can also sue and be sued in its own name.

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 a traditional limited partnership and is driven by the need to establish the precise moment at which an ILP comes into existence.

As a body corporate an ILP will have perpetual succession in contrast to a traditional limited partnership, 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 of a limited partnership.

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 members of the partnership subject to the partnership continuing to be able to discharge its liabilities as they fall due.

Separate Limited Partnerships

The **Separate Limited Partnership (Jersey) Law 201-** (the "SLP Law"), is also expected to come into force early next year. An SLP will have a separate legal personality but will not be a body corporate (like Scottish partnerships and limited liability

partnerships). In all other respects, it is the same as a traditional limited partnership.

Limited Liability Partnerships

The concept of an LLP was introduced into Jersey law by the **Limited Liability Partnerships (Jersey) Law 1997**. An LLP is not a body corporate but has a separate legal personality.

Unlike limited partnerships, limited liability is not lost by reason of an LLP partner engaging in the management of the partnership. Jersey LLPs were not designed as transactional vehicles but rather as ownership structures for professional services firms.

There are currently no Jersey LLPs, principally because of the requirement for £5 million financial security to be paid by bank or insurance company on

their winding-up. If this bond is not in place, the LLP partners are personally liable to any creditor who would have been paid from the £5 million.

UK Tax Treatment of SLPs and ILPs

Advice has been taken from leading English tax counsel as to the UK tax treatment of SLPs and ILPs.

In counsel's opinion SLPs will be transparent for both income tax and capital gains purposes, and ILPs will be transparent for income tax purposes but **not** for capital gains tax purposes.

Author: ALASTAIR DRUMMOND
Counsel – Jersey
adrummond@applebyglobal.com

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August 2010

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