



Jersey to revamp its Limited Liability Partnership Legislation

Limited Liability Partnerships (**LLPs**) are partnerships governed by the terms of their partnership agreements with some benefits also attributable to companies such as a separate legal personality and limited liability for members. LLPs were introduced in Jersey in 1997 under the Limited Liability Partnership (Jersey) Law 1997 (the **1997 Law**) and have since been used for a variety of purposes.

In Autumn 2016, the draft Limited Liability Partnership (Jersey) Law 201- (the **New Law**) was approved by the States Assembly aiming to make Jersey LLPs more competitive for use as a vehicle of choice for local and international business. The New Law is subject to crown assent and it is anticipated to come into force in early 2017.

The proposed changes in the New Law include (but are not limited to) the following points of note:

- i. **Limited Partner Contributions** – Under the provisions of the 1997 Law, a fundamental principle of the formation and continuation of an LLP was that each partner should contribute “effort and skill” to the business as an agent of the LLP.

Although the criteria for the formation of the LLP remain similar, a broader approach to the contributions required by partners has been proposed in the New Law. Each partner shall contribute “capital or effort and skill” (emphasis added) to the business as an agent of the LLP.

This significant change will facilitate the use of LLPs as investment entities in addition to their common use as professional services entities.

- ii. **Designated Partner replaced with an LLP Secretary** – An LLP in Jersey was previously required to have at least one designated partner who was responsible for certain administrative obligations of the LLP. The role of a designated partner will be replaced with a Jersey based secretary who shall be required to be a partner in the LLP or appropriately registered under Part 2 of the Financial Services (Jersey) Law 1998 to carry on trust company business.

The role of the secretary under the New Law is to hold certain records of the LLP and to ensure annual returns of the LLP are filed. The records to be maintained and held, together with the standards of record keeping to be met by the secretary are outlined in the New Law. The New Law imposes an obligation on all partners to take reasonable steps to ensure that the records are prepared and kept properly and accurately.

- iii. **Specified Solvency Statements** – Amendments to the LLP law in 2013 removed the requirement for all LLPs to maintain a £5,000,000 bond as protection for creditors. Rather than the requirement for such bond to be in place, the amendments to the 1997 Law meant an LLP was required to give an annual solvency statement, bringing the Jersey legislative position in line with other jurisdictions such as the UK.

The New Law proposes greater flexibility by removing the requirement for solvency statements to be made annually. Failure by the LLP to provide a solvency statement is not itself an offence. The New Law aims to provide greater protection for creditors by requiring the LLP to provide solvency statements prior to any of the partners removing property from the LLP. An LLP will be guilty of an offence if it permits a partner or former partner to withdraw property from the LLP if a solvency statement has not been given in the 12 months before the withdrawal of the property. The withdrawing partners themselves will also be liable to return the property to the LLP or pay the LLP the sum of the value of the property withdrawn together with interest on such sum where a solvency statement was not made in the 12 months preceding the withdrawal or was made without reasonable grounds.

- iv. **Dissolution of an LLP by the Registrar** – Under the provisions of the New Law, an LLP can be wound up for a variety of reasons. The New Law permits the registrar to publish and serve a notice on any LLP in a number of circumstances, including the failure by the LLP to appoint a secretary, failure to provide its secretary any accounting records or annual return required, failure to pay any Jersey Financial Services Commission fees or failure to have a registered office in Jersey. Where such circumstance is not rectified by the LLP in the time period provided by the notice, the registrar will issue a certificate of dissolution in respect of the LLP.

The New Law is intended to repeal and replace the current 1997 Law. As such, it is envisaged a transition period of 12 months would be provided to existing LLPs to adopt the requirements of the New Law, notably the appointment of the secretary. Once an LLP appoints a secretary, the provisions relating to the role of the secretary would become active. Failure by the LLP to appoint a secretary in the 12 months following the New Law's implementation would result in the LLP committing an offence under the legislation.

As noted above, the aim of the New Law is to ensure Jersey LLPs are more competitive for use as a vehicle of choice for local and international business. Since the introduction of the amended 1997 Law in 2013, fewer than 50 LLPs have been incorporated. It is expected therefore that the number of LLPs in Jersey will continue to rise considerably over the coming years once the New Law is implemented.

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