

JERSEY LIMITED LIABILITY PARTNERSHIPS

OCORIAN BRIEFING

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Jersey LLPs are governed by the Limited Liability Partnerships (Jersey) Law 1997 (as amended, the "Law"). This briefing summarises the main requirements to form an LLP and highlights its principal features.

Formation

Partners

An LLP must have at least two partners (which can include natural persons or corporate or non-corporate bodies) carrying on business with a view to profit. The partners must agree to contribute effort and skill to the LLP business, to share profits and that each partner has an interest in the property of the LLP. There is no requirement for any partners of the LLP to be resident in Jersey.

There is no designation under the Law of "limited partners" or "general partners" in an LLP; each partner has limited liability and can take part in the management of the LLP. However, an LLP must have at least one "designated partner" who is required under the Law to carry out certain administrative functions.

Registration

LLPs are registered by submitting a declaration to the registrar of limited liability partnerships (the "Registrar") at the Jersey Financial Services Commission (the "Commission") in Jersey. The declaration must set out core details in relation to the LLP, including its name, registered office, intended partners and activities. The declaration will also indicate which of the intended partners is to be the "designated partner".

There is no requirement to file the LLP agreement with the Registrar. There is also no requirement for any minimum amount of capital to be subscribed for in an LLP, either at its registration or during its continuance. On registration, the Registrar issues a certificate confirming the date of registration of the LLP.

Creation of partnership interests

In order for an LLP to create partnership interests, regulatory consents must be obtained from the Commission.

Principal Features

The main characteristics of an LLP are summarised below:

Legal personality: An LLP is a separate legal person (but not a body corporate) distinct from its partners. Accordingly, an LLP can enter into contracts, own property and sue and be sued in its own name. An LLP is liable for its own debts and losses; in particular, no judgment can be enforced against any LLP property unless that judgment is granted against the LLP (although creditors of a partner may have recourse to that partner's interest in the LLP).

Partnership property: Under the Law, an LLP can hold property in its own name, or alternatively property can be held by any person on behalf of the LLP. Subject to the LLP agreement, and as long as there are at least two partners in the LLP, such property holding arrangements will continue notwithstanding any change in the persons who are partners in the LLP.

Limited liability: A partner (or former partner) in an LLP has limited liability, unlike in an ordinary partnership, and so will not be liable for the debts or losses of the LLP (including any debt of, or loss caused by the act of, another partner in the LLP), unless the losses are caused by that partner (or former partner). A partner may be liable to return property (including profits) withdrawn by that partner from the LLP in certain situations, including:

- if the LLP is unable to pay its debts at the time of such withdrawal, or the LLP becomes unable to pay its debts as a result;
- if the withdrawal was made otherwise than in the ordinary course of affairs of the LLP and the LLP became unable to pay its debts within six months; or
- if no prescribed "specified solvency statement" is given in the twelve months before the withdrawal, or the specified solvency statement was given without reasonable grounds.

The "specified solvency statement" is a statement made by the LLP that, having regard to the prospects of the LLP, the intentions of the partners as to the management of the LLP's business and the amount and character of the financial resources available to the LLP, the LLP will be able to continue to carry on business and discharge its liabilities as they fall due for the period of twelve months immediately after the date of the statement, or until the dissolution of the LLP, if earlier. A saving provision may also be available where the LLP is solvent but the specified solvency statement was not made.

The Law states that nothing in an LLP agreement can deprive the partners of their limited liability as mentioned above, but makes it clear that the partners of an LLP, as between themselves, can indemnify one another in respect of any debts or losses.

Tax transparency: An LLP is tax transparent for Jersey income tax purposes; no tax assessment is raised on the LLP itself, but the partners in an LLP are potentially assessable to tax in their own names.

However, non-Jersey resident partners in an LLP are not subject to Jersey tax other than in respect of certain Jersey source income (excluding interest on Jersey bank deposits), such that generally no Jersey tax will be payable by non-Jersey resident partners. If a partner in an LLP is liable to Jersey income tax on his or her share of the profits (for example, in the case of a Jersey resident individual partner) then the designated partner in the LLP must deliver a statement of those profits to the Comptroller of Taxes in Jersey.

Public disclosure: Whilst the LLP agreement (if it is in writing) is a private document, the names and addresses of the partners of the LLP must be disclosed to the Registrar on initial registration and by way of an annual declaration (similar to an annual return for a company) and so will be available to the public. No accounts need to be filed in relation to the LLP (unless the Jersey LLP is undertaking certain types of financial service business).

Transfer of interests: The designated partner in the LLP must notify the Registrar of any changes to the information stated in the registration declaration within 28 days, and the Registrar will issue a certificate to the LLP confirming the registration of such changes. Where an additional partner is admitted to an LLP a statement in respect of such admission is deemed to be delivered to the Registrar on the day that the partner is admitted, whether before or after the day on which the statement is actually delivered. In contrast, the retirement of a partner may not have effect before a statement is delivered to the Registrar.

Assignment: A partner's interest in an LLP cannot be assigned, except by way of a charge. Changes can, however, be made in partnership interests on the admission, retirement or death of a partner, or, if the partner is not an individual, upon that partner ceasing to exist, or otherwise in accordance with the LLP agreement.

Dealings between an LLP and its partners: The Law expressly states that a partner in an LLP may enter into any transaction with the LLP, including borrowing or lending money.

Rights in an LLP: Unless otherwise stated in the Law, the rights and duties of the partners in an LLP shall, as between themselves, be determined by the LLP agreement. Accordingly, with the exception of the liability of a partner to repay a withdrawal of LLP property in the circumstances mentioned above, there are no provisions that restrict the amount or timing of contributions or loans made to the LLP, the sharing of profits or the return of contributions or the repayment of loans by the LLP.

Accounts: Unless an LLP agreement requires otherwise, it is not necessary for an LLP to appoint an auditor or have its accounts audited. An LLP must keep accounts, which may be drawn up in any currency, and must keep those accounting records for at least ten years. Any specified solvency statements must also be retained for the same period.

Records: An LLP must retain certain records at its registered office. These include details of the partners, a copy of the registration declaration and other statements delivered to the Registrar (including any specified solvency statements) and a copy of the LLP agreement (if it is in writing). All partners are entitled to inspect the records.

Correspondence: The name, registration number and the words "registered as a limited liability partnership in Jersey" must be clearly stated in all correspondence, invoices, statements and public documents of an LLP.

Advantages compared to other partnership vehicles

The main distinction between an LLP and other Jersey partnerships is in relation to the limited liability of all of the partners in the LLP. An LLP has an advantage over, firstly, an ordinary partnership as LLP partners will have limited liability and, secondly, a limited partnership on the basis that an LLP does not need to have at least one (general) partner with unlimited liability. Unlike a Jersey limited partnership, a Jersey LLP must be formed with a view to profit, rather than for any lawful purpose. As an LLP has separate legal personality it shares many of the characteristics and advantages of a separate limited partnership.

As with other types of Jersey partnership, but unlike an English LLP, a Jersey LLP does not have to comply with provisions of any companies legislation and there is no requirement to file accounts with any authority (unless the LLP is undertaking certain types of financial service business). Unlike an English LLP, which must have at least 2 designated partners (or, if less than two, all English LLP partners are deemed designated partners), it is permissible for a Jersey LLP to have just one designated partner.

The limited liability of its partners, the flexibility of governance and regulation of Jersey LLPs and their tax transparent nature are likely to lead to LLPs being commonly used in both local and international business structures.

KEY CONTACTS

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