

Amendments to the Limited Partnerships (Jersey) Law 1994

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The Limited Partnerships (Jersey) Law 1994 (the **Jersey LP Law**) will be amended by the Limited Partnerships (Amendment No.2) (Jersey) Law 202- (the **Amendment Law**). Having been approved by the Jersey States Assembly, it is now subject to Privy Council approval and will come into force in Q3 this year. The Amendment Law is, to date, the most significant overhaul of the Jersey LP Law and the changes should be well-received, given that the Jersey LP Law governs a large proportion of Jersey investment funds, particularly private equity and real estate funds, as well as asset holding structures, joint ventures and employee incentive arrangements.

The Amendment Law is primarily designed to modernise and clarify aspects of the Jersey LP Law with a view to ensuring that Jersey remains competitive among leading investment fund jurisdictions. The list of statutory "safe harbours" has been expanded, for example. In addition, to ensure that partners enjoy maximum flexibility in deciding how a limited partnership will operate, the Amendment Law makes a number of matters in the Jersey LP Law subject to the terms of the limited partnership agreement and removes restrictions which would otherwise limit the powers of a general partner. It also provides for certain new reporting obligations on behalf of limited partnerships and empowers the Registrar of Limited Partnerships (the **Registrar**) to cancel the registration of a limited partnership where the general partner is in continued default of its obligations under the Jersey LP Law.

The following are the most significant changes:

Clawback obligations

Previously under the Jersey LP Law, a limited partner would be liable to repay any share of the profits of the limited partnership received by, or contributions to the limited partnership returned to, the limited partner, for a period of six months from the date of receipt of such payment, where the limited partnership was insolvent at the time of, and immediately following, the payment, to the extent that the share of profits or contribution was necessary to discharge a debt or obligation of the limited partnership incurred during the period that it represented an

asset of the limited partnership. Amendments have been made to make the six month statutory maximum clawback period subject to the provisions of the limited partnership agreement and the test will simply be whether the payment to the limited partner was made at a time when, and immediately following which, the partnership was insolvent.

Liability of partners generally

The limitation of the liability of a limited partner for the debts and obligations of a limited partnership to the amount of the limited partner's contribution stated in the partnership records has been subordinated to the terms of the limited partnership agreement.

The liability of a general partner is expressly set out in terms that a general partner is liable for the debts and obligations of the limited partnership if the assets of the limited partnership are insufficient to discharge the debts and obligations of the limited partnership.

Liability of limited partners to creditors

The inclusion of the corporate name of a limited partner in the name of a limited partnership will no longer expose that limited partner to liability to creditors as a general partner, so long as the name is not calculated or likely to mislead.

Article 19(5) of the Jersey LP Law has been amended to expand the list of activities (commonly known as "safe harbours") which, if undertaken by a limited partner, will not constitute participating in the management of the limited partnership, including:

- exercising veto rights in respect of decisions of the limited partners, including in relation to the acquisition or disposal of investments
- acting, or appointing a representative to act, as a member of an investment or advisory board or committee, including giving advice in respect of, or consenting or refusing to consent to, any action proposed by the general partner and exercising any powers or authorities of such committee
- being a partner in a general partner which is, itself, a limited partnership
- enforcing rights under the limited partnership agreement

Partners' rights as between themselves

The Amendment Law provides that a limited partnership agreement may provide that a partner has no rights to a return of contributions or to receive profits, or both.

Limited partners' rights to access partnership records

A limited partner's right to inspect and take copies of partnership records and to be given a

formal account of partnership affairs is made subject to the provisions of the limited partnership agreement. This will enable general partners to limit access to sensitive commercial information.

Third party rights

The Amendment Law includes a new provision whereby rights afforded to persons who are not parties to the limited partnership agreement can be enforced.

Winding up and dissolution on termination

A complete overhaul of the provisions relating to the winding up and dissolution of limited partnerships has been carried out.

The previous process whereby a limited partnership's dissolution preceded its winding up has been replaced by a simpler process whereby, upon termination in accordance with the limited partnership agreement, the limited partnership's winding up commences. A limited partnership may be wound up by its general partner or by another person authorised under the Jersey LP Law or the limited partnership agreement to carry out the winding up. Once the winding up has been completed, a request for the cancellation of the registration of the limited partnership is delivered to the Registrar. Upon the Registrar cancelling its registration, the limited partnership is dissolved. An offence has been created, punishable by a fine, should the general partner fail to wind up the limited partnership or request the cancellation of the limited partnership's registration upon completion of its winding up.

Winding up and dissolution in other circumstances

General Partner's continued default

The Amendment Law introduces the concept of "continued default", meaning default by the general partner of its duties under the Jersey LP Law where such default is continuing despite the Registrar having given 30 days' notice of the default to the general partner at the last known address of the limited partnership. In cases of continued default, the Registrar may cancel the registration of the limited partnership and the dissolution of the limited partnership will take effect immediately upon registration of the cancellation. In such circumstances, in order to protect the limited partners, the Amendment Law provides that:

- the liability of limited partners continues to be limited in the manner provided by the Jersey LP Law
- the general partner is liable for the cost of reinstatement and re-registration of the limited partnership without recourse to the assets of the limited partnership and remains liable for the debts and obligations of the limited partnership, and

- the general partner's rights, powers or authority in connection with the assets or liabilities of the limited partnership must not be exercised except as may be required to realise the assets, discharge the liabilities, distribute any surplus assets, take any necessary steps in connection with the winding up of the limited partnership or apply to the Royal Court for the reinstatement and re-registration of the limited partnership

Death etc of general partner

As is currently the case under the Jersey LP Law, where the winding up of the limited partnership has been triggered by the death, incapacity, withdrawal, winding-up etc of the sole or last remaining general partner and the limited partners have not elected another general partner to take over and continue the activities of the limited partnership within the prescribed period (being 90 days of the commencement of the winding up), the limited partnership must be wound up in accordance with the partnership agreement or, on the application of a limited partner or creditor of the limited partnership, in accordance with the directions of the Royal Court.

Application to the Royal Court

In addition to the current circumstances in which the Royal Court may order the winding up of a limited partnership, namely on the application of a partner, if the Court is satisfied that:

- the limited partnership is being conducted in a manner calculated or likely to affect prejudicially the carrying out of the activities of the limited partnership
- the limited partnership is being conducted in a manner oppressive to one or more of the limited partners
- circumstances have arisen which render it just and equitable that the limited partnership be wound up

it may also do so on the application of the Registrar, if the Court is satisfied that the activities of the limited partnership are bringing Jersey's reputation into disrepute.

In each of the above cases, upon completion of the winding up of the limited partnership, a request for the cancellation of the registration of the limited partnership must be delivered to the Registrar and, upon the Registrar cancelling its registration, the limited partnership is dissolved. Offences have been created, punishable by a fine, should the person responsible fail to request the cancellation of the limited partnership's registration upon the completion of its winding up in these circumstances.

Reinstatement of a dissolved limited partnership

It is now possible for a partner or creditor of a limited partnership, or any other interested party,

to apply to the Royal Court at any time before the expiry of 10 years after the date of the cancellation of the registration of the limited partnership, for an order declaring the cancellation void. The person making the application must deliver the Act of Court to the Registrar for registration, the effect of which will be that the limited partnership is reinstated as a limited partnership registered under the Jersey LP Law.

Annual Confirmation

To facilitate the effective supervision of limited partnerships, the Amendment Law introduces the requirement for an annual confirmation to be delivered to the Registrar by the end of February in each year. The annual confirmation must be delivered by the general partner or a "nominated person" authorised on its behalf (which could include a limited partner) and must state that the matters set out in the declaration of limited partnership made under the LP Law are correct, the limited partnership's status as continuing or in wind up and any other prescribed information. An offence has been created punishable by a fine should the general partner fail to deliver the annual confirmation.

Recommended Action

Impact of changes on existing structures

Despite the Amendment Law coming into force with no transitional arrangements, in most cases, it is not anticipated that it will trigger an immediate requirement for limited partnership agreements to be amended. However, as many of the provisions are intended to provide clarity and build further flexibility as well as introducing new winding up and dissolution mechanics, we would recommend that existing agreements are reviewed to ensure that they allow for any requisite flexibility.

For further information, please contact one of the partners listed here or your usual Ogier contact.

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