



## Frequently Asked Questions (FAQs) relating to Partnerships

- › **PART A: Partnerships and Beneficial Ownership and Control**
- › **PART B: The Implications of the Limited Liability Partnerships (Jersey) Law 2017 (the 2017 LLP Law)**

### Introduction

These FAQs have been designed to assist Partnerships with providing the correct information to the Companies Registry at the Jersey Financial Services Commission (JFSC) and therefore supplements previous guidance and FAQs issued by the JFSC.

Part A seeks to address questions relating to beneficial ownership and control, whilst Part B of these FAQs addresses questions relating to the implementation of the new Limited Liability Partnerships (Jersey) Law 2017.

Reference in these FAQs to Partnerships or Jersey Registrable Partnerships means:

- a) limited partnership (LP) formed under the Limited Partnerships (Jersey) Law 1994;
- b) separate limited partnership (SLP) formed under the Separate Limited Partnerships (Jersey) Law 2011;
- c) incorporated limited partnership (ILP) formed under the Incorporated Limited Partnerships (Jersey) Law 2011;
- d) limited liability partnerships (LLP) formed or governed under the Limited Liability Partnerships (Jersey) Law 2017.

### Please note that:

**Compliance with the enhancement to the beneficial ownership and control reporting regime to the Companies Registry at the JFSC is separate and in addition to the Trust Company Services Providers' (TCSPs) obligations to identify beneficial owners and controllers of its customers under the Money Laundering (Jersey) Order 2008 and as outlined in the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (AML/CFT).**

# PART A: Partnerships and Beneficial Ownership and Control

## 1 Why do we need to disclose beneficial owners and controllers in the P2 form and on an ongoing basis?

- 1.1 By 30 June 2017, all Jersey incorporated companies and Jersey Registrable Partnerships enhanced their records relating to beneficial ownership and control and submitted this information to the central register held by the JFSC Companies Registry as part of Jersey's commitment set out in the Exchange of Notes entered into by the Government of the United Kingdom and the Government of Jersey in April 2016. The centralisation of this information, and ongoing obligations to maintain the information as current and accurate, ensures Jersey's continued transparency and information exchange with law enforcement agencies and tax authorities, sometimes on short notice, as to who owns and controls Jersey incorporated companies and Jersey Registrable Partnerships, for example; who *can* be seen as 'pulling the strings?'
- 1.2 In order that the industry may stand up to scrutiny by the international community, and in the spirit of Jersey being a good international citizen, the JFSC would strongly recommend all TCSPs to review their contractual terms and conditions to ensure that they have the power to collect and obtain information on an on-going basis in relation to beneficial ownership and control concerning Jersey Registrable Partnerships so as to be able to submit this information to the JFSC for the wider information exchange with law enforcement agencies and tax authorities in line with the enhanced regime.

## 2 Where is the regulatory power to collect beneficial ownership and controller information?

- 2.1 Between 1 January 2017 and 30 June 2017, all existing Jersey registrable partnerships and companies were issued with new Control of Borrowing (Jersey) Order 1958 (COBO) consents requiring all such entities to provide the JFSC with current and accurate information relating to beneficial ownership and control and place an ongoing obligation on such entities to ensure that any changes are notified within 21 days of change, where the Companies Registry acts as a second line of defence for AML/CFT matters or prior consent is sought from the JFSC, where the Companies Registry acts a first line of defence for AML/CFT matters. Similarly, all newly incorporated or registered Jersey companies and partnerships were issued with new COBO consents with a condition placing ongoing notification or prior consent requirements relating to beneficial ownership and control.
- 2.2 Why are consents required from the JFSC? In respect of Jersey registered companies, a COBO consent is required from the JFSC under Article 2 where a company wishes to issue shares or admit any person to membership otherwise than by reason of the issue or transfer of shares. A consent is also required under Article 5 where there is a continuance of an external body corporate into Jersey.
- 2.3 In respect of Jersey registrable partnerships, a consent is required from the JFSC under Articles 10 and 11 of COBO, notably where:
- a) the applicant wishes to raise money in Jersey for the purposes of a partnership by the creation of any partnership interest;

- b) for any purpose to create any interests under a partnership if either that limited partnership is governed by the law of Jersey or the interests are or are to be registered in Jersey; or
- c) circulate in Jersey any offer for subscription, sale or exchange of any partnership interest created under any partnership.

### 3 What information relating to beneficial owners and controllers is required to be disclosed?

#### Rules relating to LPs, ILPs and SLPs

- 3.1 As a general rule, the following will have to be reported:
- 3.2 “General Partner plus any Limited Partners able to exercise control through ownership or through other means”.
- 3.3 Accordingly, subject to any applicable exemption, apply three tier test to the:
- › General Partner (**GP**)
  - › Limited Partners.
- 3.4 In practice this means the following:
- 3.4.1 **Scenario 1:** A Limited Partner who has 25% or more and/or *can exercise control over the Limited Partnership* (e.g. through direct or indirect holdings of interests or voting rights), then disclosure of the limited partner is required. This is in addition to information concerning the ownership and control of the GP.
- 3.4.2 **Scenario 2:** A Limited Partner has less than a 25% interest in the Limited Partnership, *with no control over the Limited Partnership*, then disclosure of the Limited Partners will not need to be made to the JFSC. However, you will still require to disclose the GP.

Further guidance is set out below explaining permissible exemptions to the general rule.

#### a) JFSC Regulated GP

- 3.5 The Government of Jersey has permitted an exemption for JFSC regulated GPs. This exemption only applies to a GP that is a corporate regulated by the JFSC. In such circumstances it is permitted to simply file the corporate name of the GP as **Owner** and **Controller**.
- 3.6 **Regulated by the JFSC** means (i) a person registered with the JFSC to carry on trust company business or (ii) a person registered with the JFSC to carry on trust company business or fund services business under the Financial Services (Jersey) Law 1998 in the case of an unregulated fund (as defined by the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008) or a certified fund under the Collective Investment Funds (Jersey) Law 1988.<sup>1</sup>

#### b) Non- JFSC Regulated GP

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<sup>1</sup> For the avoidance of any doubt, a PIRS GP is not regulated by the JFSC and therefore does not fall within the meaning of **Regulated by the JFSC**.

- 3.7 Where the GP is not regulated by the JFSC, disclosure will be required of an individual. This means that for an LP, ILP or SLP (as applicable) the analysis will need to continue to ‘drill down’ until an individual has been identified.
- 3.8 In summary, information concerning beneficial ownership and control of the following is to be disclosed to the Companies Registry at the JFSC:
- 3.8.1 The GP - where a corporate is identified please apply the three tier test and identify both owners and controllers of the GP
- 3.8.1.1 Limited Partners with a 25%+ (applying a risk based approach) interest
- 3.8.1.2 Any other person exercising ultimate effective control over the Limited Partnership (the **Power Holder**).

### Rules relating to Limited Liability Partnerships

- 3.9 All Partners will need to be reported – using a 10% threshold on incorporation and thereafter, upon change, a 25% or more threshold. Controllers who can exercise control over the LLP (e.g. through direct or indirect holdings of interests or voting rights) must also be reported – irrespective of the fact that they hold no legal ownership in the partnership (tiers 2 and 3 of the three tier test must be applied).

## 4 Who is ‘any person that otherwise exercises ultimate effective control’ over the Partnership?

- 4.1 Consideration must be given to whether any person otherwise exercises ultimate effective control. A right to exercise ‘ultimate effective control’ is a right which, if exercised, would give rise to the actual exercise of significant influence or control over a Partnership. This right to exercise ultimate effective control over a Partnership may result in that person having **indirect** control in relation to the Partnership. This would be the case *regardless of whether or not they actually exercise that right*. A person has the right to exercise ultimate effective control over the Partnership if that person has the right to direct or influence the running of the activities of the Partnership. Such persons are often referred to as **Power Holders**, for example:
- 4.1.1 Right to appoint or remove any of the Limited Partners or any GP, except through application to the courts
- 4.1.2 Right to direct or veto the profit share and/or capital returns of the Partnership’s funds or assets
- 4.1.3 Right to direct or veto investment decisions of the Partnership
- 4.1.4 Right to order amendments to the Partnerships’ constitutional documents<sup>2</sup>
- 4.1.5 Right to dissolve, re-domicile or convert the Partnerships
- 4.1.6 Right to direct or veto a decision, or exercise a right on behalf of the Partnerships or its partners.

### Example

- 4.2 Take a Limited Partnership that has 15 Limited Partners all holding an equal interest. None of them have a controlling ownership interest. The GP is a corporate and has control of the Limited Partnership. Applying the three tier test again to the GP, it is determined that the

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<sup>2</sup> To include, but not limited to, the partnership agreement and/or side letters.

three directors on the board of the GP have ultimate control over the Limited Partnership. The reporting obligation will therefore be confined to the GP.

- 4.3 Any change to the beneficial owner or controller will trigger a notification to the Companies Registry. This includes (but is not limited to):
- a) A change arising from a retirement from or appointment to the board of the GP
  - b) A change arising from a new company being appointed as GP of the Limited Partnership.
  - c) A change arising from a divestment by 11 of the Limited Partners such that there are only four Limited Partners remaining, each with 25% (i.e. JFSC approval/notification will be required for the four Limited Partners becoming controlling beneficial owners).

# PART B: The Implications of the Limited Liability Partnerships (Jersey) Law 2017 (the 2017 LLP Law)

The 2017 LLP Law came into force on 1 August 2018. This new law replaces the Limited Liability Partnerships (Jersey) Law 1997.

## 1 What does this mean for existing partnerships?

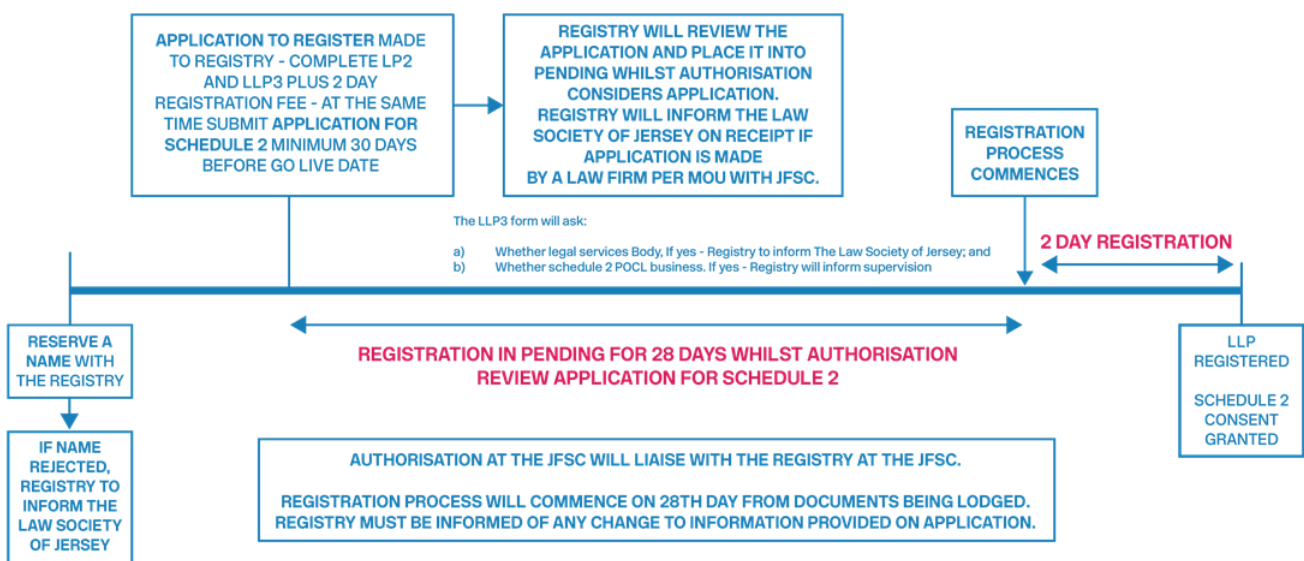
1.1 Limited liability partnerships established under the previous law will be subject to the requirements of the LLP Law 2017 and in particular have 6 months (until 1 February 2019) to notify the Companies Registry at the JFSC of the name of their secretary, a new function designed to *inter alia* replace the Designated Partner role. In this regard, the partners of the LLP must submit a LLP3s form to the Companies Registry on or before 1 February 2019.

## 2 How do I register a customary partnership as a LLP?

2.1 Customary partnerships wishing to register their firms as LLPs under the 2017 LLP Law, must first seek consent to register the new LLP. The new LLP may also require an application to the JFSC Authorisations Team as a Schedule 2 business under Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (POCL). Where a new LLP registration is sought together with a schedule 2 application, the JFSC requires applications to be made simultaneously 30 days before the intended go live date. Registration of a new LLP will require the applicant to submit both a P2 form and an LLP3 form (statement of declaration) together with the applicable fee.

### LIMITED LIABILITY PARTNERSHIPS

#### Application by customary partnerships to convert to an LLP under the LLP 2017 law



### 3 Who can apply to register a LLP?

- 3.1 You must either be:
- 3.1.1 a JFSC regulated trust company business; or
  - 3.1.2 a partner ordinarily resident in Jersey acting as a secretary for a limited liability partnership (appointed in accordance with Article 8 of the 2017 LLP law).
- 3.2 Partners acting as a secretary for a limited liability partnership must comply with requirements relating to local residents. Please refer to guidance relating to identification procedures for local residents available here.

### 4 What information do I need to disclose relating to the activity of the LLP?

- 4.1 On registration, the JFSC will request information relating to activities of the proposed LLP in order to assess whether or not such activities fall within the remit of the Sound Business Practice Policy. All applications must also clearly identify any higher risk factors. For example, where a beneficial owner is a Politically Exposed Person (PEP) or the activity of an entity in the structure or the proposed partnership itself is caught by an international sanctions regime (UN, EU, UK or US sanctions). In such circumstances, the JFSC reserves the right to request evidence that enhanced due diligence has been conducted and/or that appropriate licences have been obtained.

### 5 What are the responsibilities of the Secretary?

- 5.1 Before taking on the role of a secretary, all secretaries should seek independent legal advice as the 2017 LLP Law places legal obligations on the function of the secretary. By way of example, under Article 9 of the 2017 LLP Law, the secretary must keep for 10 years at a place in Jersey all the accounting records and returns of the limited liability partnership that are provided to the secretary by the limited liability partnership under the 2017 LLP Law. The secretary must allow any partner of the LLP to inspect any accounting record or return provided to the secretary (including any specified solvency statement, return provided under Article 11(3) of the 2017 LLP Law or annual return) of the LLP at any time during normal business hours. Equally, if the secretary sends any document to the registrar or the JFSC in accordance with a requirement in the 2017 LLP Law, the secretary must keep a copy of such documents for at least 10 years.
- 5.2 Pursuant to Article 10(3) of the 2017 LLP Law, a secretary must also take reasonable precautions –
- (a) to prevent loss or destruction of;
  - (b) to prevent falsification of entries in; and
  - (c) to facilitate detection and correction of inaccuracies in,
- the records the secretary is required to keep.

### 6 How much does it cost to register an LLP and is there an annual return and what are the fees?

- 6.1 Registration costs depend on the speed of the service requested. The current cost of registration is set out below.

Within 2 business days	£250
Within 1 business day	£350
Within 2 hours	£550
Out of hours (by agreement, minimum fee)	£1000 minimum

- 6.2 With respect to annual returns, Article 20 of the 2017 LLP Law requires the secretary of the LLP to file an annual return. The Companies Registry at the JFSC will collect an annual fee for this process. Fees are set out on the JFSC website [here](#).