



**Jersey Financial
Services Commission**

Guidance Note

Limited Liability Partnerships (Jersey) Law 1997

1 Introduction

- 1.1 The Limited Liability Partnerships (Jersey) Law 1997 (The **Law**) allows a new type of business entity to be formed in the Island, giving local and international businesses a further choice when selecting the structure that best suits their needs.
- 1.2 The Law also extends the concept of limited liability to a type of entity other than limited companies, therefore offering greater flexibility to businesses who may not wish to segregate ownership and management, as is the case with a company. This will be of interest to businesses traditionally carried out as partnerships or employee owned businesses.
- 1.3 The formation of limited liability partnerships (**LLPs**) is dealt with by the Registrar of Companies, an officer within the JFSC.
- 1.4 Once registered, an LLP has all the powers of a natural person in a similar way to a limited liability company. This is subject to the restrictions of the Law and partnership agreement. An LLP is not a body corporate although it has a separate legal personality.
- 1.5 In the event of an insolvent winding up of an LLP, a financial provision (see below) is available for the settlement of all the LLPs' debts pro rata and without preference. Preferential creditors would receive a preferential settlement from the general assets of the LLP in so far as there are such assets.
- 1.6 There is no requirement for any minimum amount of capital beyond the financial provision.

2 Names

- 2.1 An application should be made to the Companies Registry at the JFSC, prior to registration, for the proposed LLP's intended name to be reserved.
- 2.2 Detailed policies regarding names are available separately. Generally, the name of an LLP must not be undesirable or misleading.
- 2.3 The use of the word "international" in a name is restricted and is permitted to be used only by firms of stature which trade internationally.
- 2.4 An LLP must use the words "Limited Liability Partnership" or "L.L.P." in place of the words Limited Liability Partnership at the end of its name.

3 Formation

- 3.1 The arrangements for formation of an LLP will be undertaken through a lawyer, accountant, professional adviser, bank or other financial institution in Jersey. It is recommended that contact with such parties be arranged by the prospective partners through their own intermediaries in their country of residence.
- 3.2 A certificate of registration, once issued, is conclusive evidence of the registration of an LLP.

4 Consents

- 4.1 Simultaneously with the submission of the registration papers, application needs to be made under the Control of Borrowing (Jersey) Order, 1958, for consents leading to the registration of the LLP. Certain details concerning the partnership interests, the partners and proposed activities of the LLP are required to be made to the JFSC.
- 4.2 The JFSC will decide whether to grant a consent, either with or without conditions, or refuse a consent having regard to two factors:
 - 4.2.1 The need to protect the integrity of the Island in commercial and financial matters; and
 - 4.2.2 The best economic interests of the Island.

5 Administration

- 5.1 All LLPs registered in Jersey must have a registered office in the Island and maintain accounting records sufficient to disclose with reasonable accuracy, at any time, the financial position of the LLP. However, an LLP need not appoint auditors under the Law nor is there a requirement to file financial statements with the Registrar.

6 Partners

- 6.1 The relationships between the partners including the admission and retirement of partners is largely governed by the partnership agreement. However, the retirement of a partner will not take effect until proper notice has been delivered to the Registrar.
- 6.2 The following are some of the requirements of the Law that directly affect partners and are designed to ensure that the protection afforded by the limited liability cannot be abused in the event of insolvency of the Limited Liability Partnership:-
- 6.3 The potential personal liability of a partner for LLP debts in the event of wrongful or fraudulent trading if that partner had knowledge of the LLP's position or recklessly allowed it to develop in the case of wrongful trading.
- 6.4 The ability of the Court to reverse transactions at an undervalue, preferences and extortionate credit transactions.
- 6.5 A duty to co-operate with the insolvency manager who is under a duty to report criminal offences.
- 6.6 A partner's interest cannot be assigned unless by way of a charge, or on the admission, retirement or death of a partner, or, if the partner is not an individual, upon that partner ceasing to exist.
- 6.7 A partner is deemed to be the agent of the LLP for contractual purposes but not an agent of the other partners.
- 6.8 Generally, a former partner is not liable for any debt or loss accruing to the LLP.

- 6.9 If a partner withdraws property from the LLP, including his share of profits, at a time when or following which the LLP is unable to pay its debts, he may be liable to account to creditors for the amount of the withdrawal.
- 6.10 The Law also includes provisions that would affect the partners in a winding up, as stated below.
- 6.11 There is no requirement for the partners of the LLP to be resident in the Island.

7 Financial Provision

- 7.1 Every Jersey LLP is required to have in place a £5 million financial provision by a bank or insurance company. If the provision is not available on winding up, then the partners would be liable to the full extent of their assets in the event of an insolvency, as in an ordinary partnership.
- 7.2 The financial provision is available in an insolvent winding up for the settlement of all LLP debts on a pro rata basis to the extent that the provision covers them. No preference is given to any particular type of creditor out of this specific fund.

8 Winding up under the partnership agreement

- 8.1 Unless the partnership agreement states otherwise, a change in the partners will not result in the winding up of the LLP. However, should the partnership cease to have two or more partners then the Law provides that the partnership be wound up.

9 Winding up by the Court

- 9.1 The winding up of an LLP may be carried out by the Court in similar circumstances to those for a limited company. The Court has power to order the dissolution of an LLP in five instances.
- 9.2 First, the Court may make an Order if a partner becomes permanently incapable of performing his part of the partnership contract.
- 9.3 Second, if in the Court's opinion, the conduct of a partner is prejudicial to the carrying on of the business of the LLP, it will make an Order.
- 9.4 Third, if a partner is wilfully or persistently in breach of the LLP agreement, an Order will be made.
- 9.5 Fourth, an Order may be made where the business of the LLP can only be carried on at a loss.
- 9.6 Fifth, if in the Court's opinion, it is just and equitable that the partnership is dissolved, it will make an Order.

10 Insolvent Winding up

- 10.1 It is important to distinguish between a solvent winding up and an insolvent winding up. Should an LLP prove to be insolvent at the time of dissolution, or following dissolution, then a procedure must be followed which involves the calling of a creditors meeting and the appointment of an insolvency manager, who must be a qualified professional. His role is to wind up the LLP ensuring that the assets of the LLP are properly applied to discharge the debts of the LLP. The financial provision is available for payment to all creditors on a pro rata basis (see above).
- 10.2 An insolvency manager has wide powers and may do anything which may be required for the beneficial winding up of the LLP. The payment of a class of creditors in full or a compromise of any claim requires the consent of the insolvency committee or the sanction of the Court.
- 10.3 The insolvency manager is able to disclaim onerous property, to make application to the Court to reverse transactions made at an undervalue or which result in a preference and to apply to the Court to make a person personally liable for debts of the LLP if it is found that wrongful or fraudulent trading has occurred. Extortionate credit bargains may also be reversed on application to the Court if the terms of credit were imposed on the LLP within 3 years prior to winding up.
- 10.4 An LLP which is being wound up must state that fact in any correspondence issued by it.
- 10.5 The creditors of the LLP may appoint an insolvency committee to watch over the insolvency manager as he carries out his role, thus providing them with additional comfort that their interests are properly protected.
- 10.6 During an insolvent winding up a duty of co-operation is imposed on past or present partners of the LLP, present employees of the LLP or those employed within the year previous or partners of another partnership, itself a partner of the relevant LLP at any time. Any default is a criminal offence.
- 10.7 There is also a duty on the insolvency manager to report any criminal offence by any person in relation to the LLP to the authorities who shall investigate the matter and may appoint inspectors. The authorities and the inspectors have wide powers to require any person to produce information and attend an interview and otherwise give all reasonable assistance. Failure to co-operate may result in the Court punishing an offender as if guilty of contempt of the Court.
- 10.8 Should the winding up of the LLP have commenced prior to the insolvency being discovered and a person responsible for winding up the affairs of the LLP have been appointed, then the powers of that person cease except in limited circumstances.
- 10.9 It is possible for the creditors of an LLP to apply to the Royal Court for a "desastre", a winding up by the chief executive of the Court, at any time.

11 Annual Declaration

- 11.1 Before the end of February in each year following the year of registration, the designated partner must deliver an annual declaration to the Registrar stating the names and addresses of every person who was a partner on 1st January of that year.

12 General

12.1 All of the above information is intended as general guidance only and professional advice should therefore be sought on specific issues.

12.2 Copies of the Law and subordinate legislation made under it are available from:

States Greffe Bookshop,

Morier House

Halkett Place

St Helier

Jersey JE1 1DD

Telephone : +44 (0) 1534 502037

Facsimile: +44 (0) 1534 502434

13 Fee Structures

13.1 Fees payable to the Registrar are detailed in the Limited Liability Partnerships Fees Notice which is available [here](#).