

Limited Partnerships (Jersey) Law 1994

Proposed Amendments

POSITION PAPER

States 
of Jersey

RESPONSES

The Minister for Economic Development invites comments on the matters set out in this Position Paper. The closing date for responses is 14 July 2006.

Responses should be sent to

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It is the policy of Jersey Finance to make individual responses it receives available to the Economic Development Department upon request, unless a respondent specifically requests otherwise.

The contents of any response may form the subject of discussions with industry bodies and other interested parties.

1. INTRODUCTION

This document sets out law drafting instructions in relation to a proposed first amendment to the Limited Partnerships (Jersey) Law 1994 (the **Law**). Law drafting time for the amendment is in the 2006 timetable.

The Law is one of the key pieces of legislation utilised by the finance industry, particularly by the funds sector of the industry. The use of Jersey Limited Partnerships has increased significantly in recent years, and it is important to ensure that there are no barriers in the way of the continued success of this vehicle.

However, although the Law brings great commercial benefits to the Island, it is not one of the commercial laws – such as the Companies Law – that is widely used outside of a finance industry context.

In addition, recent feedback from practitioners has indicated that changes to certain aspects of the Law are needed as soon as possible in order to ensure that the Island remains competitive in this area.

Due to the specialised nature of the law and the desire to bring forward legislative change as soon as possible, it is felt that, rather than a formal public consultation, it is sensible to bring the proposed changes to the attention of those likely to be affected by them through a position paper.

It is hoped that, following the closing date for submissions in respect of this paper, law drafting instructions can be finalised and law drafting commenced with a view to an amendment to the Law being placed before the States in autumn 2006.

2. THE PROPOSED CHANGES

Ability for a Jersey Limited Partnership to elect to have legal personality

Currently, a Jersey limited partnership has no legal personality. In 2001, Guernsey amended its Limited Partnership Law to permit limited partnerships to elect to have legal identity. We wish to achieve the same here. One key benefit of a limited partnership having separate legal identity is that it affords the limited partners a different tax treatment compared to a “traditional” limited partnership.

In addition, under established conflicts of law principles it is clear that questions in relation to the existence and nature of a body corporate are to be determined in accordance with the laws under which that body has been incorporated. For an entity such as a limited partnership without legal personality the issue is less clear: potentially, whether the limited partnership exists could be determined other than by Jersey law. This gives another reason to permit limited partnerships to have legal personality (though it would leave potentially uncertain the status of a Jersey limited partnership without personality that was attacked in a foreign court, though we probably have to accept this).

It is suggested that the easiest and best way of doing this is simply to mirror the Guernsey approach, with the insertion of a new article that provides that a limited partnership shall have legal personality if at the time of its registration the general partner(s) so elect. The election should be irrevocable and any limited partnership that does elect to have legal personality should have a name ending with “Incorporated”. One key question to be addressed is whether there is any need to provide – as Guernsey did - a facility whereby existing limited partnerships can, within a short transitional window, apply to assume legal personality. Submissions have been received indicating that it might cause problems for a small number of existing limited partnerships were they to be presented with an option to assume limited liability. Therefore, unless there is evidence that a number of existing limited partnerships would benefit from this option, it is suggested that there should be no option for existing limited partnership to elect to adopt legal personality.

As a by-product of allowing limited partnerships to assume legal personality, the Bankruptcy (Désastre) Law should be amended so as to allow a désastre to take place in respect of a limited partnership with personality.

Names of Limited Partnerships (Article 7)

It is proposed that this article be amended to accommodate the usage of the abbreviation “LP” in the name of a limited partnership. The current requirement is that the name of the limited partnership ends with either the words “Limited Partnership” or the abbreviation “L.P.”. It is further proposed that a requirement be imposed on limited partnerships with legal personality to include “Incorporated” or “Inc” at the end of its name.

Clarification of relationship between general partner and limited partnership (Article 11)

It would be helpful to expand article 11 so as to clarify that a general partner is not a trustee for the limited partnership. If the general partner is a trustee, then it becomes subject to the provisions of the Trusts (Jersey) Law, which is not desirable.

Article 11(2) already provides that the general partner holds assets “in accordance with the terms of the partnership agreement”. This could perhaps be extended by adding words such as “and the general partner shall only be a trustee of those assets to the extent that the partnership agreement so provides”.

Deregistration of limited partnership (new)

Article 22 of the current law provides that the registrar shall cancel the registration of a declaration of limited partnership upon delivery of a statement of dissolution. There is no explicit power for the registrar to cancel registration without the delivery of such a statement.

There may be circumstances, however, where the limited partnership wishes to be deregistered without being formally dissolved. Examples include where the limited partnership wishes to re-register as a limited partnership in another jurisdiction, become a general partner, or convert to an ordinary partnership. In such circumstances, it is not desirable that the limited partnership be dissolved: in reality, the limited partnership may have changed its status but the likelihood is that the general partner has continued to hold assets, albeit on a different basis to before.

It is therefore proposed to include a power in the new law allowing a limited partnership to be removed from the register in circumstances where the registrar receives a request to this effect from each general partner (or each person who would be intended to be a general partner on the formation of the limited partnership). Consideration has been

given to whether a list of examples of the circumstances in which it would be appropriate to seek deregistration should be included in the law. On balance, however, it is felt that this is not necessary: it is for the limited partner to decide whether it wishes to give up the benefits of being a limited partnership. As far as third parties and creditors are concerned, the chief effect of deregistration will be a loss of the limited liability conferred by the law upon limited partners, and so it is hard to see that additional provisions are needed to protect such persons.

Such a provision would also assist in circumstances where a limited partnership was registered only for the limited partnership agreement not to be executed. The new provision would clearly permit the person who applied to register the limited partnership to apply for it to be deregistered, notwithstanding that it was never formed.

Form of documents to be submitted to registrar (new)

A new article should be included, likely to be based upon Article 200 of the Companies Law, which would clarify the ability of the registrar to accept documents in any form acceptable to him. In practice, this would enable the increased use of electronic submissions of documents, provided the documents were in a form acceptable to the registrar.