

UPDATE

New LLP Law: greater flexibility creates a more attractive regime

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The new Limited Liability Partnerships (Jersey) Law 2017 has taken effect, replacing the previous 1997 law. Changes introduced by the new law make limited liability partnerships (LLPs) a more attractive vehicle with greater flexibility. Instead of having to contribute effort and skill, partners may contribute capital; a partnership secretary is responsible for the administrative functions rather than a designated partner, and partnership interests may be transferred.

Since 1997, limited liability partnerships (LLPs) could be established in Jersey under the Limited Liability Partnerships (Jersey) Law 1997, as amended (the **Old Law**). Due to certain features of LLPs required by the Old Law, LLPs have not been as popular as other Jersey vehicles, with fewer than 70 being established, all of them after 2013 when certain restrictive elements of the Old Law were relaxed.

Today the Limited Liability Partnerships (Jersey) Law 2017 (the **New Law**) took effect, replacing the Old Law and providing Jersey with a more attractive LLP regime.

What is staying the same?

Many of the main characteristics of LLPs remain the same under the New Law.

Separate legal personality

LLPs are partnerships with separate legal personality, meaning a LLP can own its own property as well as sue and be sued in its own name. However, unlike UK or Guernsey LLPs, they are not companies or body corporates.

Limited liability for partners

A partner in a LLP is not liable for the debts or losses of the LLP, including any debts of or losses caused by the act of another partner in the LLP. The maximum amount that a partner could lose if judgment were made against the LLP would be that partner's interest in the LLP's property together with the value of property withdrawn by a partner in certain limited circumstances.

Partners in a LLP do remain liable for their own personal debts or for losses caused by them for which they are personally liable.

Must be registered and maintain its registration in Jersey

Each LLP must be registered with the Registrar of Limited Liability Partnerships in Jersey (the **Registrar**).

Solvency statements

A partner or former partner may withdraw property from the LLP only if the LLP has made within the previous 12 months, a statement in the prescribed form as to the anticipated solvency of the LLP over the following 12-month period (a **Specified Solvency Statement**). Where property is withdrawn without a

Specified Solvency Statement having been made, the partner or former partner will be liable to return the property to the LLP or an equivalent sum in cash.

What has changed?

Partners may now contribute effort and skill or capital

Under the Old Law, partners were required to contribute effort and skill to the partnership. The New Law permits partners' contributions to be made by way of effort and skill or capital. This means that investors who do not wish to have an active role in the partnership business may still be partner in a LLP, making a contribution of capital.

The concept of "designated partner" replaced with a partnership "secretary"

Under the Old Law, an LLP was required to have at least one designated partner who was responsible for certain administrative obligations in connection with the LLP. This included filing the annual declaration and any Specified Solvency Statements, maintaining the LLP's accounting and other records and, upon winding up, delivering the statement of dissolution to the Registrar.

Under the New Law, a LLP must appoint a partnership secretary and must continue to have a secretary for the life of the LLP. The partnership secretary must be either a company with a registered office in Jersey or an individual that is resident in Jersey that is a partner in the LLP, or a company or individual that is registered to carry on trust company business under the Financial Services (Jersey) Law 1998 (a TCB). The role of the Secretary replaces the role of the designated partner(s) of a LLP.

This change creates more flexibility, allowing the appointment of a TCB as secretary without the requirement that the TCB be a partner of the LLP, while still allowing a partner to perform this role if desired, provided such partner has its registered office (in the case of a body corporate) or is ordinarily resident (in the case of an individual) in Jersey.

Partnership interests may now be transferred

Under the Old Law, partnership interests in a LLP could not be assigned, other than by way of a charge. This meant that a change in partnership interest could only occur by way of retirement and admission of partners. Practically, this meant that instead of transferring a partnership interest, one partner resigned and a new partner was simultaneously admitted. There was risk associated with this, however, as under the Old Law LLPs automatically and immediately dissolved upon the partnership ceasing to have two or more partners and so if a new partner was not admitted prior to or simultaneously with the retirement of an existing partner, the LLP would be dissolved.

Under the New Law, however, assignments of partnership interests are permitted provided they are in accordance with the LLP agreement. This allows for far greater flexibility for partners wishing to transfer their interests in the LLP, making LLPs more attractive vehicles.

Additional powers for the Registrar

The Registrar will have additional powers in respect of LLPs under the New Law, including requiring an LLP to change its name in certain circumstances or refusing to register changes to the declaration of LLP where they do not comply with the New Law. The Registrar can also notify the LLP that it intends to dissolve the LLP for certain specified matters which the LLP has three months to rectify.

Changes to specified solvency statements

The New Law does introduce some minor changes and clarifications in respect of the requirements around specified solvency statements, including:

- expressly confirming that a specified solvency statement made by a partner who controls, or a partner that is part of a group that controls, the LLP will be considered a specified solvency statement made by the LLP;
- making it an offence for the LLP to permit a partner or former partner to withdraw any property where the LLP has not made a specified solvency statement in the 12 months preceding the withdrawal; and

- introducing a requirement to pay interest on amounts repayable to the LLP because the property was withdrawn without a Specified Solvency Statement being made.

Dissolution of LLPs

Other than dissolution by the Registrar as discussed above, the New Law does not address the dissolution and winding up of a LLP. Instead, dissolution and winding up are dealt with in regulations made pursuant to the New Law, the Limited Liability Partnerships (Dissolution and Winding Up) (Jersey) Regulations 2018 (the **Regulations**).

The Regulations provide for the dissolution and winding up of LLPs on terms which are broadly similar to those contained in the Old Law:

- the LLP shall dissolve immediately upon having less than two partners
- upon service to the Registrar by the Secretary (previously, under the Old Law, a designated partner) of a statement of dissolution the Registrar will provide a certificate of dissolution
- the court has the power in certain circumstances to order the dissolution of the LLP

Within certain timeframes, a dissolved LLP can be continued by two or more of the existing partners, or one existing partner and at least one new partner, by the continuing or new partners acquiring the partnership interests of the remaining partners.

The Regulations also set out in detail the procedures to wind up LLPs in both solvent and insolvent situations.

Cancellation of registration and power to reinstate

The Registrar must cancel the entry in the register relating to a LLP and issue a certificate of cancellation when notified that the winding up of the affairs of the LLP has completed.

The New Law also now includes the power for the LLP to be reinstated within ten years of the cancellation of registration, similar to a company under the Companies Law (Jersey) 1991, as amended.

If you have any queries regarding the application of the New Law, Mourant would be happy to assist.

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