

# Legal Update

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# Introduction

- Separate Limited Partnerships (SLPs) and Incorporated Limited Partnerships (ILPs)
- Jersey regulatory headlines
- Other headlines

# SEPARATE LIMITED PARTNERSHIPS INCORPORATED LIMITED PARTNERSHIPS

# SLP/ILP - background

- Two new alternative vehicles for fund promoters and private clients
- Largely based on the Limited Partnerships (Jersey) Law 1994
- Separate laws for each type of limited partnership:
  - Separate Limited Partnerships (Jersey) Law 2011 – 20th April
  - Incorporated Limited Partnerships (Jersey) Law 2011 – 26th May

# Separate Limited Partnerships

- Basic structure - similar to traditional limited partnership:
  - “any lawful purpose”
  - at least one general partner (unlimited liability)
  - at least one limited partner (limited liability – provided no management)
  - partnership agreement – not public
  - declaration of limited partnership – register with Registrar of Limited Partnerships
  - registered office in Jersey – register of limited partners, statement of contributions

# Separate Limited Partnerships

- Separate legal personality:
  - can transact in its own right or through the general partner
  - the *ultra vires* doctrine does not apply
- Name – “Separate Limited Partnership” or “SLP”

# Separate Limited Partnerships

- Tax treatment - tax transparent
  - Jersey - non assessable – Jersey limited partners / non-Jersey limited partners
  - UK - tax transparent
- Profits - vest in partners immediately (nb must be solvent to distribute / 6 month claw back)

# Incorporated Limited Partnerships

- Basic Structure - based on the 1994 Law, with differences
- Name – “Incorporated Limited Partnership”, “ILP” or “Inc LP”
- Body corporate:
  - completely separate from its limited partners
  - will hold assets in its own name
  - has perpetual succession

# Incorporated Limited Partnerships

- Debts and liabilities:
  - ILP is responsible for its debts and liabilities
  - GP only responsible after ILP defaults
- General partner's duties:
  - GP owes the ILP statutory fiduciary duties similar to those that directors owe to companies
  - GP required to act in the best interests of the ILP – ratification by limited partners if solvent

# Incorporated Limited Partnerships

- Regulations:
  - summary winding up, winding up on just and equitable grounds, creditors' winding up
  - transactions at an undervalue, preferences
  - fraudulent trading
- Possible amendments?
  - Regulations referencing partnership agreement, eg general partner resolution to wind up, but subject to partnership agreement

# Incorporated Limited Partnerships

- Tax treatment - non taxable in Jersey and tax transparent in the UK for income tax, SDLT but not for CGT
- Right to profits - vests in the LPs as soon as profits made

# LP, SLP, ILP – Differences and Similarities

Feature	"Traditional" Limited Partnerships	Separate Limited Partnerships	Incorporated Limited Partnerships
Separate legal personality	NO	YES	YES
Body corporate	NO	NO	YES
Unlimited capacity as a legal person	NO	YES	YES
Dissolution formalities	Delivery of a statement of dissolution to the registrar	Delivery of a statement of dissolution to the registrar	Must follow the procedure set out in the Regulations
May hold property in its own name	NO	YES	YES
Law expressly provides that GP in agent of the partnership?	NO	NO	YES
Unlimited liability of the general partner	YES	YES	Yes, but only after the partnership itself defaults
Limited liability of the limited partners	YES	YES	YES
Name requirements	Must end: "Limited Partnership" or "L.P." or "LP"	Must end: "Separate Limited Partnership" or "S.L.P." or "SLP"	Must end: "Incorporated Limited Partnership" or "I.L.P." or "ILP" or "Inc. L.P." or "Inc LP"
Perpetual succession	NO	NO	YES
Must have at least one limited partner and one general partner	YES	YES	YES

# HEADLINES

# Jersey regulatory headlines

- Registration of NEDs
- Certified funds prospectuses order
  - Meeting IOSCO standards
  - All certified funds potentially affected
  - Responsibility – companies, directors, GPs, trustees (unless manager/ inv. manager)
  - Content requirements
- Product strategic review

# Jersey regulatory headlines

- JFSC dear CEO letter 6 April
  - Examination findings:
    - Monitoring of valuations and performance by boards
    - Due diligence - on promoters, investors, other elements of overall structure
    - Oversight of outsourcing arrangements

# Jersey regulatory headlines

- Policy matters
  - Changes to recognized fund rules – pending AIFMD clarity
  - Changes to outsourcing policy (delegation by fund functionaries) – to be published shortly
  - Funds Codes / FSB Codes revisions – pending AIFMD clarity / IOSCO review of principles
  - AML handbook – funds section
  - FSB client assets order
  - Closed-ended collective investment funds guide

# Other headlines

- AIFMD
  - Are you managing an EU fund?
  - Where and how are you going to market your fund?

# Other headlines

- Dodd-Frank
  - Are you an investment adviser who has US investors?
  - 15 client rule abolished
  - Exempt reporting advisers – private fund advisers  
'exemption' [reporting, recordkeeping, inspection]
- FATCA
  - Are you an FFI which invests in the US?

# Bedell Cristin client feedback

- “... recommended for its entrepreneurial and solutions-driven approach and for fielding lawyers who are easily accessible and offer personal attention and care.”
- “...excellent speed of response and overall level of service and expertise.”
- “...able to translate practical solutions into legal language/structures”
- “...very accessible...strongest Jersey firm in funds in my opinion.”

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