

Jersey Separate Limited Partnerships versus Scottish Limited Partnerships - which are better?

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Introduction

The Separate Limited Partnerships (Jersey) Law 2011 introduced the Separate Limited Partnership into Jersey law.

A Jersey Separate Limited Partnership ("JSLP") has legal personality and tax transparency and therefore provides an alternative to the Scottish Limited Partnership ("SCLP") which has been relatively widely used to date.

As offshore lawyers operating in a number of jurisdictions we are often asked to compare and contrast structures available in other jurisdictions with those available to us. The key advantages to using a JSLP over an SCLP relate to tax, flexibility around withdrawing limited partner's commitments, accounting standards and requirements and a lack of public disclosure of limited partners. More detail on the advantages a JSLP has over an SCLP is set out below.

SCLPs

Fees charged by a Jersey managed and controlled general partner to a JSLP will not be subject to VAT,

1. VAT / Goods and Services Tax *except to the extent which fees are attributable to UK real estate.*

Fees will not be subject to Jersey Goods and Services Tax provided

If the SCLP is managed by a separate manager rather than its general partner the management fee would be subject to a VAT charge.

the service is eligible and the JSLP is registered as an international services entity.

2. Stamp taxes / SDLT on UK assets

If the JLP holds UK real estate, SDLT may be chargeable on transfers of partnership interests.

Where a JSLP does not hold UK real estate (assuming that a transfer is executed offshore) there will ordinarily be no charge to stamp duty.

If the SCLP holds UK real estate, SDLT may be chargeable on transfers of partnership interests.

Where an SCLP holds stock or marketable securities, stamp duty may be chargeable on a transfer of partnership interests, but this will be capped at 0.5 per cent of the market value of the stock or marketable securities, net of any debt secured solely on them.

3. Inheritance Tax

There is no concept of inheritance tax in Jersey so Jersey resident partners of a JSLP will not be subject to inheritance tax.

An interest in a JSLP will normally be considered a non UK situs asset for inheritance tax purposes.

An interest in an SCLP is likely to be regarded as a UK situs asset for UK inheritance tax purposes.

4. Income Tax / Capital Gains Tax

UK taxpayers qualifying for the remittance basis of taxation will find it easier to prevent a remittance of income and gains of the JSLP from being treated as remitted to the UK.

Income and gains of the SCLP are likely to be treated as remitted to the UK.

5. UK Tax Returns

If the JSLP has no activities in the UK and does not file a UK partnership return, it is expected that non-UK resident partners will

Requirement for a Unique Tax Return number to be submitted with a SCLPs UK tax return in respect of each partner. Certain industry groups are lobbying to change the stance on this

not need to notify Unique Tax Return numbers.

(including the British Private Equity & Venture Capital Association).

6. Return of Limited Partners Contribution Pre Winding-Up

Payments representing a return of all or any part of the limited partner's contribution to the JSLP can be made prior to a winding-up of a JSLP. This is provided that at the time of and immediately following the payment the JSLP is solvent.

In the event that the JSLP is not solvent / becomes insolvent 6 months after the payment this may be repayable to the JSLP.

Limited partners of an SCLP may not receive back their capital contribution until the SCLP is dissolved.

7. Acting as both a Limited Partner and General Partner

Statute expressly allows a person to be a general partner and a limited partner at the same time in the same JSLP.

It is not possible for a person to be both a general partner and a limited partner at the same time in the same SCLP.

8. Disclosure of Limited Partners

There is no public register of partners of a JSLP (therefore providing limited partner confidentiality).

A list of partners of an SCLP is included on a public register.

9. Place of Business Requirement

A JSLP must have a registered office in Jersey which it is authorised to use.

The JSLP must maintain a partnership register, a copy of the partnership agreement and information relating to partner

The principal place of business of an SCLP must be in Scotland. There is some debate in the UK in terms of the implications of this. Practically, the approach that is usually taken is that the administrative headquarters, records of management decisions and possibly, accounting records should be in Scotland.

contributions at its registered office. Records of management decisions and accounting records may be kept there or elsewhere.

If the SCLP is ever treated as a trading entity (which the majority are not), this debate could lead to permanent establishment arguments.

10. Use by UK resident non-domiciled individuals ("URND")

URND are more likely to use a non-UK limited partnership such as a JSLP.

There is debate as to whether an SCLP is a safe vehicle for a URND to invest through i.e. in the case of carry in a non-UK target.

International Financial Reporting Standards are not applicable to JLPs.

11. Accounting Standards

JSLPs must keep accounting records that are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy at any time the financial position of the JSLP.

International Financial Reporting Standards are applicable to SCLPs.

If there is any default in the above, each general partner is guilty of an offence and liable to a fine.

12. Filing / Auditing

Unless otherwise required by contract or regulation, there is no requirement to appoint an auditor.

Similarly, there are no requirements to have accounts audited, filed or made available for public inspection.

In certain circumstances, annual accounts of SCLPs will be required to be audited and filed with the Registrar (see (13) below re the Regulations which broadly apply to partners in a partnership).

SCLPs fall under the definition of 'qualifying

13.
Requirements
of the
Partnership
Accounts
(Amendment)
Regulations
2010 (the
“Regulations”)
pursuant to EU
Accounting
Directives

JSLPs do not fall under the definition of 'qualifying partnerships' under the Regulations and so the Regulations are not applicable.

partnerships' under the Regulations and so are required to meet the audit requirements of the Regulations which are not yet in force but are likely to be in force during the course of 2011. Broadly the Regulations which amend the existing Partnership Accounts (Amendment) Regulations 2008 require the following and place an onus on the partners of a partnership in respect of the following:

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There is an exemption from the above requirements if consolidated / group accounts are prepared.

14.
Assignment of
Limited
Partners
Interests

A limited partner of a JSLP must not assign an interest in a JSLP until all the limited partners and all the general partners consent to such assignment or the partnership agreement permits such assignment. In practice, this will be the case.

An advert must be placed in the Edinburgh Gazette in order for an interest of an SCLP to be assigned and such assignment will not take effect until such notice has been published. The public nature of an assignment can therefore be a negative point for limited partners of an SCLP.

15.
Requirement
to Appoint a

There is no requirement for a JSLP which constitutes an investment fund to appoint a registered operator under the Financial

Where an SCLP falls under the definition of a 'collective investment scheme' under FSMA it

Registered Operator	<i>Services and Markets Act 2000 (“FSMA”). However, other requirements may apply under Jersey collective investment fund legislation.</i>	<i>must be established, operated and wound up by a person duly authorised by the Financial Services. The majority of SCLPs fall under this definition.</i>
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16. Laws Governing Investment Funds	<i>Jersey’s laws relating to the establishment of investment funds are up to date, relevant and often subject to reform.</i>	<i>Scottish and English law relating to the establishment of investment funds are generally non-specific and more difficult to amend.</i>
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17. Holding Property	<i>Title to the property of a JSLP may be vested in the name of its general partner on behalf of the limited partners or in the name of the JSLP itself.</i>	<i>An SCLP is able to hold property itself.</i>
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18. Status as bodies corporate	<i>Although a JSLP is not a body corporate it does have legal personality. In the event a Jersey partnership which is a body corporate is required for a transaction a Jersey incorporated limited partnership can be used.</i>	<i>There is some uncertainty as to whether a SCLP is considered a body corporate.</i>
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For more information on JSLPs and Jersey incorporated limited partnerships, please see the following client briefing:

[Innovations in Limited Partnerships](#)

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