# Jersey Limited Liability Partnerships from 1 August 2018

Insights - 19/07/2018

The Jersey limited liability partnership (the **LLP**) was introduced in 1997. The new Limited Liability Partnerships (Jersey) Law 2017 will be in force on 1 August 2018 (the **New Law**). The New Law will replace the Limited Liability Partnerships (Jersey) Law 1997 (the **1997 Law**) with a view to make the Jersey LLP more competitive and the vehicle of choice for local and international businesses. The New Law improves provisions relating to (i) a solvency test when distributing from the LLP, and (ii) the registry and its functions and makes the insolvency provisions clearer.

**Transitional arrangements** provide for LLPs established under the 1997 Law to continue under the New Law as if they had been registered under and granted a certificate under the New Law. However, an LLP established under the 1997 Law is required to appoint a secretary and notify the registrar of the name and address of this secretary within six months of the New Law coming into force. Until the LLP has appointed a secretary in accordance with the New Law, the designated partner will carry out the responsibilities of the secretary under the New Law.

**The concept of the secretary to the LLP** is a new one which seeks to create flexibility whilst ensuring accountability. The secretary will replace the role of the designated partner in the LLP and unlike the designated partner, will have to be based in Jersey. The secretary can be an individual or a corporate, provided that it is Jersey resident or incorporated in Jersey. Alternatively, the secretary may be an entity registered to carry on secretarial services to LLPs under the Financial Services (Jersey) Law 1998. This means that where the LLP has a Jersey based partner, the role of the secretary could be carried out by that person with potentially no additional costs. The secretary is responsible for the keeping of accounting records including solvency statements and also for the filing of annual returns.

A particularly attractive and distinguishing feature of the LLP compared to a UK limited liability partnership **is the ability of a partner of the LLP to be an employee of the LLP at the same time**. A partner of an LLP may be an employee because the New Law permits a partner to enter into any transactions with the limited liability partnership (including lending money to, and borrowing money from the LLP).

Under the 1997 Law each partner was required to contribute effort and skill to the business of the partnership as an agent of the LLP. The New Law permits a partner to contribute effort and skill OR capital to the business of the partnership. By **broadening the contribution requirement** for LLPs, it is clearer LLPs can now be used as investment entities.

The solvency statement (the **Solvency Statement**) was previously required to be made annually in Jersey. It is no longer required annually and the failure to provide a Solvency Statement is not an offence under the New Law. Now, distributions can only be paid if there has been a Solvency Statement made within the last 12 months. The Solvency Statement is made by one or more partners, who together control the management of the LLP, and confirms that the LLP is solvent and will continue to be solvent for a further 12 months from the date being made, taking into consideration the financial position of the company and the intentions of the partners. A partner who makes or made a withdrawal without a current Solvency Statement in existence, or where the statement was made without reasonable grounds and is incorrect, is liable to the LLP to pay a cash sum representing the value of the property or to return the property.

## Dissolution and cancellation

An LLP will be dissolved immediately on there ceasing to be two or more partners in the LLP. Furthermore, failure to rectify one of the following may result in the dissolution of the LLP:

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If a partner is permanently incapable of performance, unfairly prejudiced by another partner's conduct or where it is just and equitable to do so, the partnership may be dissolved by order of the court.

The Limited Liability Partnership (Dissolution and Winding Up, etc) (Jersey) Regulations 2018 (the **Regulations**) set out how an LLP may be wound up and permits two or more partners to acquire the partnership interests of the remaining partners by agreement or direction of the court. The Regulations permit an LLP to be reinstated following its dissolution for a period up to 10 years from the date of cancellation of the LLP.

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