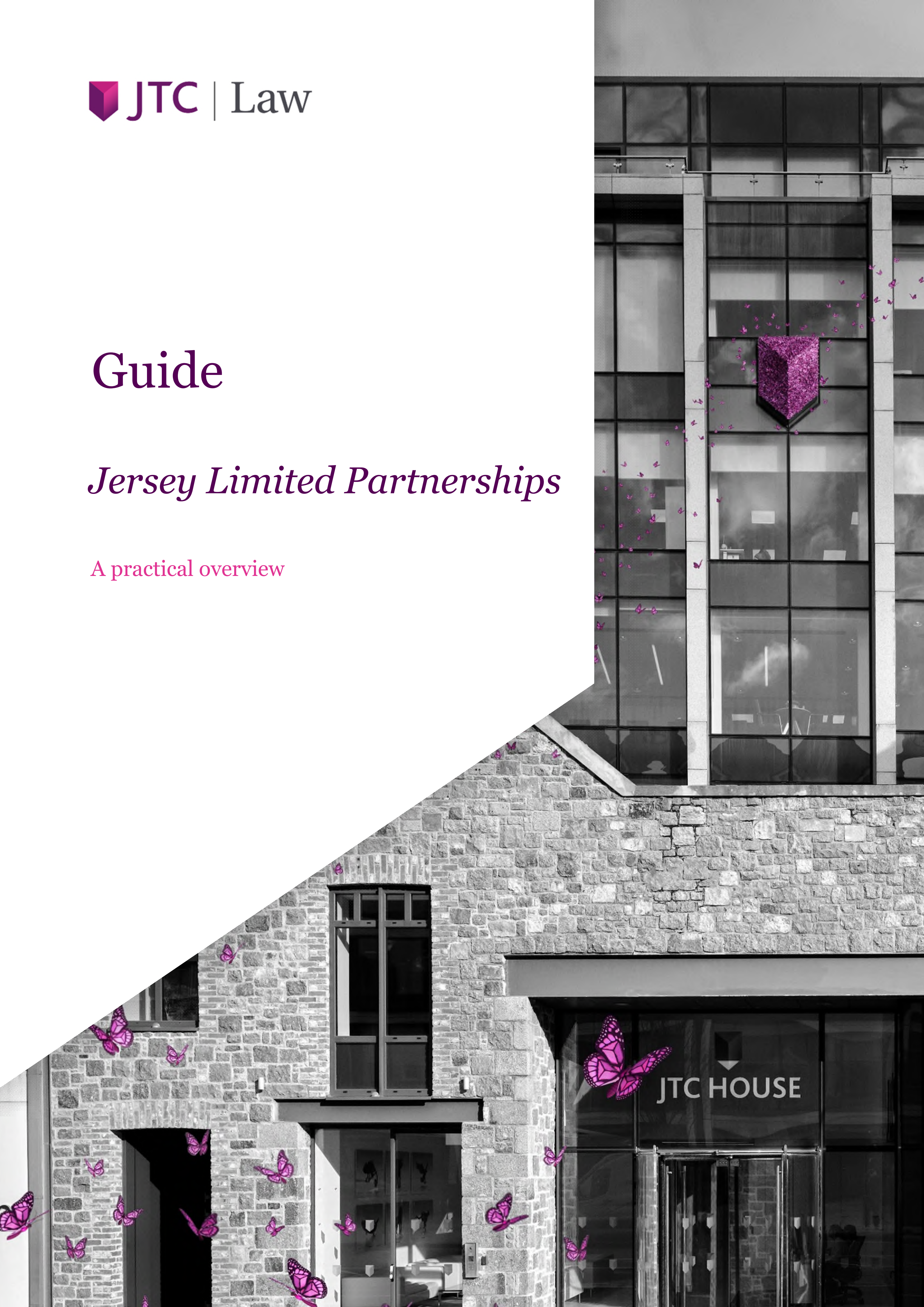
Guide

Jersey Limited Partnerships

A practical overview



1. Uses

A Jersey limited partnership (**LP**) is a flexible and popular legal vehicle and typical uses include:

- deal by deal structures;
- private funds and public collective investment funds;
- asset holding vehicles for private wealth and family offices;
- joint ventures;
- tax and financial planning including estate planning/succession and asset protection; and
- profit sharing, employee incentive, carried interest and co-investment vehicles.

Jersey LPs are regularly used particularly in relation to alternative asset classes such as the private equity, venture capital and real estate sectors and have been utilised by some of the world's biggest funds and asset managers.

2. Key Features

Structure
A Jersey LP can be established for any legal purpose (whether or not for profit) and must have: • at least one general partner (**GP**) – which has exclusive responsibility for managing the LP, holding its assets and is fully liable for its debts; and • at least one limited partner (**Limited Partner**) – who may make a contribution but does not manage or have an ability to bind the LP, who are separate persons. The partners may be individuals, bodies corporate, unincorporated bodies or a partnership. A LP does not have separate legal personality, meaning contracts are entered into and assets are held by the GP on behalf of the LP.
Liability
Limited Partners benefit from limited liability, whilst the GP has unlimited liability in the event the LP is unable to discharge its debts and obligations. Typically the GP would therefore be a corporate entity (usually a special purpose vehicle). LPs have liability limited to the amount they have agreed to contribute unless otherwise agreed by all of the partners in the LP or stated in the LP agreement. LPs must not take part in management, or they risk losing limited liability. However, the Law includes extensive protected activities ("safe harbours") that LPs may undertake without being treated as managing the LP. These include, but are not limited to: • acting as an employee or agent of the LP or GP; • acting as a director, officer or shareholder of the GP or being a partner in a GP which is itself an LP; • advising the GP;

- voting on, otherwise signifying approval or disapproval of, withholding or withdrawing consent or exercising veto rights in respect of a variety of key matters such as amendments, asset disposals, or winding-up; and
- serving on advisory committees.

Committee members (whether or not they are limited partners in the LP) owe no duty to the LP, its partners, other committee members and any third party except as expressly provided for in the limited partnership agreement (**LPA**) or the terms of their appointment.

Subject to the terms of the LPA, a limited six-month clawback period applies if a limited partner receives a distribution or return of capital at a time when the LP was insolvent or became insolvent as a result of that payment. References to solvency are to cash flow solvency.

The Law also expressly provides for enforceable third party rights for those persons who are not partners (such as directors of the GP).

Flexibility

LPs are governed by the Limited Partnerships (Jersey) Law 1994 (**Law**), which is deliberately permissive and flexible to enable partners to tailor LPs to their commercial needs and largely agree the key elements of its operation between them.

In particular:

- there are no upper limits on the number of Limited Partners or partners;
- there are no requirements for the GP to be Jersey-resident (unless required for regulatory or tax purposes) or to make a financial contribution to the LP;
- contributions may be made in cash, property or services;
- accounts may be kept in any currency;
- there are no statutory audit requirements unless the LPA or regulatory status requires it;
- there is an ability to build in detailed provisions regarding advisory committees and enable GPs to enter into side letters with Limited Partners; and
- there is wide scope to specify how capital is contributed, drawn down and how value is returned, noting that typically the LPA should set out expressly if Limited Partners are entitled to receive any asset other than money in respect of their contribution and the LPA can provide for a Limited Partner to have no rights to receive contribution or profits.

Confidentiality

The Jersey Financial Services Commission (**JFSC**) requires confidential disclosure of the individuals behind the LP and GP. However,

- Limited Partner identities are not public and not disclosed on the public register of LPs;
- the LPA is not filed and remains private; and

- annual filings are not themselves separately disclosed on the public register of LPs other than the date of the last filing.

The GP's name and address would be disclosed on the LP declaration on the public register of LPs and if it is a Jersey company, its directors and shareholders would be on the public register however if that is a concern, a Jersey regulated administrator will be able to assist. Other information typically available is the certificate of registration and declaration.

Limited Partners have a right to inspect the LP documents, subject to the terms of the LPA, which can be drawn narrowly to limit access to GP records or internal documentation. Similarly, the LPA can determine whether the names of other limited partners should or shouldn't be made available to each other.

Tax Transparency

LPs are tax transparent for Jersey taxation purposes and are often attractive due to the tax neutrality afforded to the Limited Partners. The tax transparent nature of the LP has also been recognised for UK tax purposes by HMRC.

As LPs don't have their own separate legal personality, this broadly means that a partner's share of the income (or losses) of an LP is treated as arising directly to them and will be subject to tax in accordance with the laws of their own jurisdiction of tax residence.

As a result, non-Jersey Limited Partners can have confidence that no Jersey income tax or witholding will apply to their share of profits/gains/distributions provided the LP is not trading in Jersey or earning Jersey-source investment income. Interest they receive from loans to a LP would not usually be regarded as Jersey-source income.

Jersey resident partners would be charged Jersey income tax at their applicable rate on their share of income arising from the LP.

There is no requirement to pay a fee for approval of Jersey tax treatment of the LP and Jersey also has no capital gains tax.

3. Formation Process

A Jersey LP can be established quickly, often same-day (provided a GP has been identified and is ready to act in that role along with at least one Limited Partner) and typically the process will involve:

- preparing an initial LPA (although this is not filed with the JFSC);
- a declaration is filed with the JFSC (acting as Registrar of LPs) together with registration fees by the nominated person appointed by the GP (typically provided by the Jersey administrator of the GP and proposed LP); and
- upon registration, the JFSC issues a certificate of registration.

Depending on the nature of the activities of the LP (such as where it qualifies as a Jersey private fund, an 'AIF' or a collective investment fund), it may be necessary to obtain additional consents from the JFSC. Further information is available on request on applicable regulatory classifications and consents.

4. Economic Substance

Where a non-fund LP is required to meet economic substance requirements due to carrying on 'relevant activities', the GP plays a central role. The GP is responsible for ensuring that the LP is managed in Jersey for any in-scope activities and that the LP has adequate people, expenditure and physical presence in Jersey to support those activities.

If the GP is a Jersey tax resident company and it carries on an activity that falls within scope of the substance regime, the GP itself must also meet substance expectations.

A LP that is regulated as a collective investment fund or a private fund would be likely to be exempt from economic substance requirements itself although the GP would be subject to the regime.

In practice, the Jersey regulated administrator to both the GP and the LP will assist with ensuring suitable and straightforward compliance with the requirements and advice should be arranged for each LP's circumstances.

5. Winding Up and Dissolution

The winding up of an LP will occur before dissolution (similar to a solvent company winding up) and once winding up is complete the request to cancel the registration of the LP is then filed with the JFSC. Dissolution takes effect upon the registration of the cancellation of the registration by the JFSC.

A Jersey LP may be wound up by the GP or another person authorised under the LPA (or the Law in certain circumstances, which can include the Royal Court or a liquidator). The GP's bankruptcy, dissolution, death/incapacity, withdrawal etc triggers winding-up unless a new GP is appointed within 90 days. The JFSC may cancel the registration of a LP if the GP is in continuing default and the Royal Court may order winding-up if the LP is being conducted oppressively or in a way that harms Jersey's reputation. A partner, creditor or other interested party may apply to reinstate a LP within 10 years of dissolution.

6. Migration of Foreign Limited Partnerships

Foreign LPs may apply to migrate into Jersey provided they:

- have at least one GP and one LP with the associated responsibilities for liabilities of the LP under the Law;
- are solvent and not subject to winding up or insolvency proceedings or had a receiver or equivalent appointed;
- come from a jurisdiction that permits continuance; and
- will not have separate legal personality on continuance in Jersey.

7. Additional types of LPs

Jersey is also able to offer two additional types of LPs: Separate Limited Partnerships and Incorporated Limited Partnerships. These variants offer different degrees of legal personality. Additional information is available on request.

8. Next Steps

If you're considering establishing a LP in Jersey or continuing / migrating a limited partnership to Jersey, please get in touch with any of our team.

JTC Law can supports clients will legal and regulatory advice through all aspects of the life cycle of a LP and GP, including:

- structuring and tax advice;
- drafting constitutional, fundraising and transactional documents;
- governance;
- advice in relation to the appropriate regulatory framework and treatment; and
- assisting with applying for any necessary regulatory consents.

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