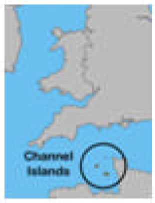
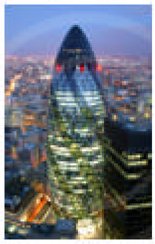
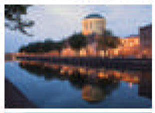
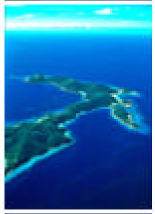
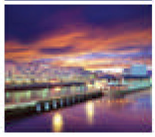
February 2011

# Jersey Separate and Incorporated Limited Partnerships

**Amedeo Claris-Delmedico**
Financial Services Lawyer



***"The new separate and incorporated limited partnerships will complement the range of vehicles already available in Jersey, giving fund managers and promoters greater choice and flexibility"***

Two new types of legal vehicles will shortly be available in Jersey, the **separate limited partnerships** ("SLPs") and the **incorporated limited partnerships** ("ILPs").

The SLPs and ILPs laws are currently awaiting Privy Council approval and it is expected that they will come into force during Q2 2011. SPLs and ILPs will complement the range of vehicles already available in Jersey, giving businesses greater flexibility as to how to structure their operations, and fund and private equity promoters additional options for the creation of their Jersey investment and carried interest vehicles. They should also find application in a wide range of corporate and private client structures.

Both SLPs and ILPs laws are closely modelled on the Limited Partnership (Jersey) Law 1994 pursuant to which traditional Jersey limited partnerships ("LPs") are established and the key differences are outlined below.

SEPARATE LIMITED PARTNERSHIPS

**SLP Structure**: save for certain key differences outlined below, the basic structure of SLPs is similar to traditional Jersey LPs. An SLP must have at least one general partner and one limited partner; these can be individuals or bodies corporate. An SLP is required to have a partnership agreement and its general partner must be registered by a declaration under the SLP law. These are substantially the same requirements as for traditional Jersey LPs and it will simply be a matter for the partners to decide to register under the LP law or the SLP law, depending on whether they wish the limited partnership to have its own legal personality.

An important new feature of SLPs is that they will have separate personality. An SLP will be considered a 'legal person' without being a body corporate and will be able to transact, hold rights, assume obligations and sue and be sued either in its own name or in the name of its general partner. SLPs will have unlimited capacity under the SLP law. The *ultra vires* doctrine will not apply and the SLP will be able to do anything which a natural person could do.

In many respects, SLPs will be similar to existing Scottish limited partnerships, although there are some potential advantages in choosing a Jersey SLP over its Scottish counterpart. One advantage is that a Jersey SLP may be set up for "any lawful purpose", whilst a Scottish limited partnership must be "between persons carrying on business with a view to profit". This will give greater flexibility on the use of SLPs. In addition, the SLP law states – without any geographical or other qualification – that an SLP has legal personality. On the other hand, the UK Partnership Act 1890 provides that "In Scotland a firm is a legal person distinct from the partners of which it is composed...". This leaves open the possibility that a Scottish limited partnership may not be treated as having such personality *outside* Scotland.

It is also important to note that the SLP law makes clear that the SLP itself, despite being a legal person, is not capable of committing a criminal offence except where the contrary is provided in the relevant legislation. This reflects the position of an ordinary limited partnership, which cannot commit offences. Liability for any offence would instead fall on the individual partner (or partners) who have actually committed the offence.

**Partnership Property**: an SLP is capable of holding assets in its own name, as opposed to traditional Jersey LPs, which hold assets through one or more general partners. However, an SLP will not be precluded from the possibility of holding assets in the name of its general partner if it is so required for structuring or other purposes. The SLP law states that, whether property is vested in the name of one or more general partners, it will still be held for the benefit of the partners in accordance with the partnership agreement. This provision has been expressly included in the SLP law in order to avoid that the introduction of the concept of separate legal personality for the SLP cast doubt on the ownership of the partnership assets where these are held by one or more general partners.

**Tax treatment**: for the purpose of Jersey tax laws, SLPs will be treated in the same way as traditional Jersey LPs and will not be assessable on Jersey income tax. Whilst tax advice should always be sought, it is anticipated that SLPs will be treated as transparent for the purpose of UK income tax, capital gain tax, corporation tax and Stamp Duty Land Tax. The SLP law provides that (unlike in the case of a company and its shareholders) the right to profits vests in the limited partners as soon as those profits are struck, without the need for any further distribution. This means that the insertion of the SLP as a separate legal entity does not interfere with the flow of profits to the limited partners, even when those profits may not be immediately drawn down by the partners.

Under the SLP law, there will be no statutory obligation for an SLP to have its accounts audited and provisions as to accounts audit may be made in the limited partnership agreement of the SLP.

## INCORPORATED LIMITED PARTNERSHIPS

**ILP Structure**: ILPs will be a more innovative addition to vehicles available in Jersey for collective investment and private client matters. The ILP law will also be largely based on the traditional Jersey LP law and will provide that an ILP must have at least one general partner and one limited partner; these can be individuals or bodies corporate. As in the case of SLPs, ILPs can be established for "any lawful purpose" and each general partner of the ILP will be required to file a declaration with the Jersey Registrar pursuant to the ILP law in order for the ILP to be validly incorporated.

**ILP as a Body Corporate**: Like SPLs, ILPs will also have legal personality but, in addition, they will be bodies corporate akin to limited companies and completely separate from their limited partners. Accordingly, an ILP will be able to hold assets in its own name, rather than in the name of its general partner (although it will still be possible for the ILPs' assets to be held by a nominee), and will be able to sue and be sue in its own name. In contrast to traditional Jersey LPs and SLPs, ILPs will have perpetual succession and will only be dissolved in accordance with the ILP law – and any regulations made threunder – with winding up and insolvency procedures similar to those applicable to Jersey limited companies, or in accordance with the terms of the limited partnership agreement, regardless of the death, dissolution, bankruptcy or withdrawal from the ILP of the general partner(s).

Two interesting distinctions from other forms of limited partnership lie in the liability of ILPs vis-à-vis third parties and in the powers and duties of the ILPs' general partner (or general partners). In fact, contrary to LPs and SLPs in relation to which the general partner has unconditional and unlimited personal liability for the debts and obligation of the partnership (although, in practice, the general partner is often structured as a limited liability company or entity), an ILP will be primarily responsible for its debts and liabilities and the general partner will only be responsible for debts and liabilities that have not been satisfied out of the assets of the ILP and only after the ILP has defaulted. In addition, the general partner of an ILP will not act as a partner but as an agent of the ILP and will owe the ILP statutory fiduciary duties – analogous to those that directors owe to their Jersey companies – and will be required to act in the best interest of the ILP. General partner's breaches of these fiduciary duties can be ratified by all the partners in the ILP, subject to the partnership continuing to be able to discharge its liabilities as they fall due after such ratification.

On this basis, ILPs could potentially be operated in a manner similar to limited companies, while retaining most of the flexibility and characteristics of a limited partnership. This will be of particular importance for investors resident in jurisdictions that are not familiar with the concept of a limited partnership. In fact, such investors will benefit from an additional layer of protection of the limitation of liability deriving from their membership of a body corporate which will be entranced in the ILP law and not only contractually in the limited partnership agreement, as it is the case for traditional limited partnerships.

**Tax Treatment**: as in the case of SLPs, ILPs will be treated as transparent vehicles for the purpose of Jersey tax laws in the same way as traditional Jersey LPs and will not be assessable on Jersey income tax. UK counsel's opinions suggest that ILPs will be treated as transparent for the purpose of UK income tax, corporation tax and Stamp Duty Land Tax, but they will probably be considered opaque for the purpose of UK capital gain tax.

Under the ILP law, there will be no statutory requirement for an ILP to have its accounts audited and provisions as to accounts audit can be made in the limited partnership agreement of the ILP.

For further information in relation to the above, please contact **Amedeo Claris-Delmedico** at info@amedeclarisodelmedico.com or on +44 (0)20 7600 8370.