Family limited partnerships

A family limited partnership for Jersey law purposes is a limited partnership formed under the Limited Partnerships (Jersey) Law 1994 (the "LP Law") with a view to holding investments and/or other assets on behalf of a wealthy family (a "Jersey FLP").

**Tax**
Following the coming into force of the Finance Act 2006 the UK has penalised trusts for estate planning purposes notably with regard to up front inheritance tax charges and ongoing inheritance tax charges. Jersey FLPs have been used to "offshore" UK assets by changing their situs for inheritance tax purposes. In addition it may be possible to arrange for the Jersey FLP to be funded without triggering CGT (for example, with business assets that qualify for business assets holdover relief under TCGA 1992).

The Jersey FLP is "transparent" for Jersey tax purposes. This means that the Jersey FLP is not itself subject to assessment to Jersey income tax. The partners are assessed in their own names. In cases where Jersey FLPs are established for non-residents where the Jersey FLP’s income consists wholly of investment income the non-resident partners will not be liable to Jersey income tax (except in the unusual circumstance that the income includes Jersey source investment income other than bank interest).

**Basic structure**
In consequence, certain wealthy families situate in the UK have been using a Jersey FLP as an alternative structure to a trust. Like trusts, a Jersey FLP can be used to transfer beneficial ownership to the younger generation whilst at the same time enabling the retention of a measure of control by the founding entrepreneur or parents.

The parents or founding entrepreneur contribute assets in consideration for limited partnership interests which can then be gifted to the children according to their wishes. The Jersey FLP is managed by a general partner ("GP") whose role is similar to a trustee. The GP will be responsible for managing the business or affairs of the Jersey FLP and has unlimited liability in respect of the Jersey FLP’s business or activities (a special purpose limited liability Jersey company is ordinarily used to act as a corporate GP). The limited partners are dormant or sleeping partners and provided they take no part in the management of the Jersey FLP their liability will be limited to the capital or value of property they contribute. However, the Law specifies a number of exempted activities so that limited partners are permitted to take part in certain management decisions or activities without losing the protection of limited liability.

**Formation and registration**
A Jersey FLP will require a written partnership agreement. It is also prudent to confirm the name of the Jersey FLP at an early stage. The name reservation procedure is the same as for Jersey companies so it is necessary to complete a name reservation form and submit the same to the Jersey Financial Services Commission (the "JFSC"). Note the name must have "Limited Partnership" or "L.P." at the end.

From a statutory perspective the limited liability of limited partners of a Jersey FLP is only obtained when a declaration signed by the GP is delivered to the registrar of limited
partnerships (the “Registrar”) at the JFSC; there is a minimum of one general partner and one limited partner participating in the partnership; and the Registrar has issued a certificate confirming registration of the statutory declaration. Note, therefore, that prior to registration the partnership will be a general unlimited partnership. Accordingly, the fundamental rule should be that the business or activities of the Jersey FLP cannot be commenced before registration otherwise putative limited partners will bear unlimited liability in respect of the business or activities undertaken prior to registration.

Details of limited partners do not need to be included in the statutory declaration filed with the Registrar and no details need to be provided in the statutory declaration as to the capital sums to be contributed to the Jersey FLP by limited partners or the business or other activities of the Jersey FLP. Also, the partnership agreement is not filed. However, while none of the foregoing information is required by the Law to be included in the Jersey FLP’s statutory declaration filed with the Registrar, it should be noted that the creation of limited partnership interests in relation to a Jersey FLP requires a Control of Borrowing Consent and, in order to obtain this consent, the Registrar will require answers to the sort of questions and similar confirmations to those supplied when forming a Jersey company (to include details of the proposed activities of the Jersey FLP and details of beneficial ownership).

Regulation
In terms of the Jersey regulatory treatment a Jersey FLP used as a private investment vehicle may require registration under the Financial Services (Jersey) Law 1998 (the “FSJ Law”) albeit in practice there are a number of exemptions to the requirement to register under the FSJ Law that may apply in a private wealth management context.

Other advantages
Aside from the tax benefits a Jersey FLP could be used to hold assets that a professional trustee with investment duties owed to beneficiaries may be reluctant to hold in a trust. In addition the client is able to retain more control with a Jersey FLP than might be the case where assets are held in trust by a professional corporate trustee. The GP may be controlled by the client in similar fashion to the board of a private trust company. Once of sufficient age and experience the client’s children can also take a more active role in the activities of the Jersey FLP by joining the board of the GP albeit with limited access to the assets. A trust on the other hand will always need to maintain an irreducible core content of duties owed by the trustee to beneficiaries to ensure its continued validity.

Disadvantages
However Jersey FLPs being creatures of contract do not offer the same flexibility as trusts and are not the answer to all structuring requirements. The needs and wishes of wealthy dynasty families change over time and broadly a Jersey FLP with specific limited partnership interests is unlikely to be as flexible as a discretionary trust with widely drawn dispositive powers when it comes to addressing changing family circumstances. Re-balancing the partnership interests is unlikely to be as straightforward as preparing a new letter of wishes or varying the trust instrument and may have material implications in terms of the original UK tax planning. In addition a limited partner will have significantly more rights than a discretionary beneficiary of a trust when it comes to access to partnership documentation and information. The need for flexibility and limited access to key documentation and information concerning the family and/or the extent or value of assets are often two key issues when it comes to dynasty planning for wealthy families.

Separate Limited Partnerships and Incorporated Limited Partnerships
Following the coming into force of the Separate Limited Partnerships (Jersey) Law 2011 and the Incorporated Limited Partnerships (Jersey) Law 2011, it is now possible to establish Separate Limited Partnerships (“SLPs”) and Incorporated Limited Partnerships (“ILPs”). Accordingly, together with traditional Jersey limited partnerships under the LP Law, there are three distinct limited partnership options in Jersey each with their own key features. For instance, both SLPs and ILPs have separate legal personality in contrast to the traditional Jersey limited partnership and can hold assets in their own name, rather than in the name of the general partner and can sue in their own name. In addition, ILPs are incorporated (that is, bodies corporate akin to a limited company and completely separate from their partners) and have perpetual succession. For UK legal and accounting practices the addition of SLPs and ILPs adds further structuring options for the Jersey family limited partnership to the traditional Jersey limited partnership model.

"The need for flexibility and limited access to key documentation concerning the family and/or the extent or value of assets are often two key issues when it comes to dynasty planning for wealthy families."
under the LP Law. (For additional information on traditional limited partnerships, please refer to our briefing on the Limited Partnership (Jersey) Law 1994 and for additional information on SLPs and ILPs, please refer to our briefing on Jersey separate and incorporated limited partnerships).

International Private Client
As a Jersey law firm we do not provide UK tax advice. To date our International Private Client Group has worked closely with leading UK legal and accountancy practices on the formation and regulatory treatment of Jersey FLPs. We have also advised trust companies in Jersey on the regulatory treatment and practical operation and management of Jersey FLPs.
For further information, please contact:

Jersey

James Campbell
Partner
T +44 (0)1534 814613
E james.campbell@bedellcristin.com