

STATES OF JERSEY



Jersey

DRAFT LIMITED PARTNERSHIPS (CONTINUANCE) (JERSEY) REGULATIONS 202-

Lodged au Greffe on 22nd June 2020
by the Minister for External Relations

STATES GREFFE

REPORT

1. Background and purpose of the Draft Regulations

Jersey's Funds Industry is one of the Island's key growth sectors in its financial services industry. It has international reach and offers investors and promoters alike a tax neutral location for their investment combined with resilient and expert fund administration services.

Government has been requested by the Funds Industry to urgently bring in new provisions to allow for the continuance of unincorporated foreign limited partnerships into Jersey. Other competitor jurisdictions' laws expressly allow for continuance of foreign limited partnerships as well as migrations out. The Draft Regulations form part of Government's immediate economic recovery strategy post COVID-19 and have been prioritised.

The urgency is driven by the opportunities arising from the new European listing process. Government has been advised by representatives of the Funds Industry there have been as many as 12 recent enquiries for migration to Jersey from foreign limited partnerships potentially lost due to the absence of the necessary statutory continuance provisions. A number of these foreign limited partnerships operate as funds and would therefore be affected by the new European listing process.

The Funds Industry have advised that most foreign limited partnerships which are likely to wish to migrate to Jersey would look to move the administration to Jersey too as it is better placed to meet the requirements of the European economic substance regime.

In order to bring such new provisions in within the required timescale it is necessary to do so by way of Triennial Regulations. There are certain restrictions on how Triennial Regulations can operate along-side existing law – they can only supplement the law rather than amend it. In addition, they must not infringe the Royal Prerogative or have an extra territorial effect. The Draft Regulations have been prepared with these limitations in mind. An abridgement of the lodging period is also required. This has been addressed already with Scrutiny.

The key laws which the Draft Regulations supplement are the [Limited Partnerships \(Jersey\) Law 1994](#) (the "LP Law") and the [Control of Borrowing \(Jersey\) Order 1958](#) (the "COBO Order").

2. Consultation

It should be noted that there has not been an opportunity to undertake a full public consultation in respect of these Draft Regulations. This is due in part to their urgency and also, after consideration of the nature of the new continuance provisions and their likely impact from a local and international perspective, it was concluded that wider consultation was not required. This matter has, however, been reviewed and commented on by Jersey Finance's Limited Partnership Working Group, a technical group who are experts within the Funds sector (the "Working Group").

The Jersey Financial Services Commission (the "Commission") has been fully engaged throughout the process. A representative from the Commission was involved in the initial discussions with the Working Group and in the subsequent preparation of the Working Group's business case for its prioritisation and, finally, in the review of all drafts of the Draft Regulations. The Commission is in the process of revising its online application process for limited partnerships to allow for continuance and is also revising

its associated guidance to deal with issues arising on continuance of foreign limited partnerships.

3. The Draft Regulations

The Draft Regulations set out the process by which an unincorporated foreign limited partnership can be approved for continuance into Jersey and the effect of continuance on its pre-existing state and thereafter as an unincorporated limited partnership governed by the LP Law.

The key features of the Draft Regulations are outlined below –

(a) *Definition and interpretation*

The key concept the Draft Regulations introduces is the concept of an “*eligible foreign limited partnership*”. This is an unincorporated limited partnership, which is formed under the law of a foreign jurisdiction and it represents the type of partnership entitled to apply for continuance under the Draft Regulations.

(b) *Application process for continuance*

The application process is set out in Regulations 2 to 5 –

- (i) **Regulation 2** sets out what eligible foreign limited partnerships may apply to continue as a limited partnership into Jersey. This regulation requires the foreign law by which it is governed to permit or not prohibit its continuance within Jersey. It also requires the eligible foreign limited partnership to be solvent, not in a state of being wound up or in administration or deregistered in the foreign jurisdiction except when it is part of the foreign continuance process.
- (ii) **Regulation 3** sets out the documents and filings which are needed for an application for continuance and for the application to be made to the Commission (and not the Registry). As part of the application, the general partner of the eligible limited partnership must make a declaration which states it is solvent, will not have legal personality on its continuance and that it has applied for registration under the LP Law and for the consent of the Commission under Article 10 of the COBO Order: this relates to the creation of partnership interests under the COBO Order (the “**Consent**”).

The purpose of requiring these additional applications under the LP Law and the COBO Order is twofold. Firstly, to ensure the foreign limited partnership exists as a limited partnership under the LP Law in the event the Triennial Regulations fall away without the continuance provisions being incorporated into that primary law. Secondly, to reflect the JFSC’s existing requirement for any new limited partnership registering under the LP Law to also be issued a Consent. The Commission uses this consent process to enable disclosure of the limited partner’s beneficial ownership and controllers for its AML/CFT purposes. The Consent is also necessary for any foreign private closed fund wishing to qualify under the relevant Investment Business exemptions as a Jersey Private Fund. Jersey’s Private Fund Regime is one of its key attractions for fund business internationally.

- (iii) **Regulation 4** sets out the manner the Commission will determine the application for the continuance of the foreign limited partnership within Jersey and the appeals process which shall apply. It gives the JFSC power to refuse the application if it considers it would be contrary to public interest. It also requires the applicant to have met the requirements of Regulations 2 and 3 and for a Consent to have been issued. In this manner

continuance of a foreign limited partnership operates in the same way as the continuance of a foreign company operates under the [Companies \(Jersey\) Law 1991](#) and the COBO Order; a Consent must be issued before continuance can be approved and a certificate issued.

- (iv) **Regulation 5** sets out that the Registry is not to register the foreign limited partnership as a limited partnership under the LP Law until the Commission has approved its application for continuance. Once the Registry has received this confirmation and the documents attached to the foreign limited partnership's application it will register them and issue a certificate of continuance, both in paper form and electronically. This certificate of continuance is stated to be evidence of the limited partnership having complied with the Draft Regulation's requirements of the application process and that the foreign limited partnership is from the date of the certificate continued as a limited partnership within Jersey. The second part is important as there are foreign law tax implications as to the foreign limited partnership being recognised to be the same partnership as it was in its previous jurisdiction and not a new one.

- (c) *Effect of continuance*

Regulation 6 sets out the effect of continuance. It provides that the foreign limited partnership is no longer to be treated as formed under the foreign jurisdiction's laws and that all its existing assets and property which it held or acquired before continuance are treated as its property held under the provisions of Article 11(2) of the LP Law. The provision further clarifies that continuance does not create a new legal entity, affect any partnership interests or affect any acts or things done before by the limited partnership or the rights, powers, authorities, functions or obligations its partners or other persons. This clarification is important as there are foreign law tax implications if such matters are not treated as unaffected by the continuance. It is also important for the future activities of the limited partnership and local advisers' ability to give an opinion on its rights and its ownership of certain assets. This provision makes plain that continuance does not operate to release or impair any conviction, judgment, ruling, order, claim or debt or liability or associated criminal or civil proceedings issued by or against the limited partnership, a partner or other person in relation to the limited partnership.

- (d) *Fees and Charges and Forms*

Regulation 7 provides that the Commission may charge fees in accordance with its published fees for dealing with continuance applications and that it will not be obliged to determine any application if the fee has not been paid.

The Draft Regulations also provide that the Commission can publish forms and other documents together with details of the manner in which such forms or documents are to be authenticated. **Regulation 8** provides for the situation where no standard template forms have been created. In that case the document or information can be provided in a form which is acceptable to the Commission.

These are standard administrative provisions to allow the eligible foreign limited partnership's continuance application to be managed in accordance with the Commission's standard administrative processes and fees.

- (e) *Offences*

Regulation 9 introduces an offence for a person who provides false or misleading information or who aids or abets in the offence. The maximum penalty for this offence is two years and a fine. It mirrors the offence and penalty provision under Articles 36, 36A and 37 of the LP Law.

(f) *Citation and duration*

The Draft Regulations would come into force on the day after they are made and, as Triennial Regulations, will remain in force only for 3 years. They can be renewed, if required, by the States Assembly. However, the intent is to formalise these continuance provisions in the relevant legislation before the expiry of the three-year period.

4. Financial and manpower implications

There are no financial or manpower issues that would arise for the States from the adoption of these Draft Regulations.

EXPLANATORY NOTE

The Draft Limited Partnerships (Continuance) (Jersey) Regulations 202-, if passed, will make provision for an eligible foreign limited partnership (defined as a limited partnership, without legal personality, formed outside Jersey) to continue as a limited partnership within Jersey if certain requirements are met.

Regulation 1 contains interpretation provisions.

Regulation 2 specifies that an eligible foreign limited partnership may continue as a limited partnership within Jersey if the law of the jurisdiction under which it is or was formed does not prohibit its continuance within Jersey. It further provides that an eligible foreign limited partnership may not continue as a limited partnership within Jersey if it is being wound up, if a receiver or manager has been appointed in relation to its assets, if it is subject to insolvency proceedings or if it has been deregistered for a purpose other than continuance within Jersey.

Regulation 3 outlines the procedure for the making of an application to continue as a limited partnership within Jersey. The application must be accompanied by a declaration that states (among other things) that the limited partnership has applied for registration as a limited partnership under the Limited Partnerships (Jersey) Law 1994.

Regulation 4 contains provisions relating to the determination of applications to continue as a limited partnership within Jersey and appeals concerning such determinations. The Commission may, if of the opinion that it would be contrary to the public interest to register a limited partnership within Jersey, refuse an application.

Regulation 5 requires the registrar to issue a certificate of continuance to the limited partnership if the Commission has granted the limited partnership's application to continue within Jersey. For the purpose of Article 10 of the Control of Borrowing (Jersey) Order 1958, the partnership interests and any other interests under the eligible foreign limited partnership in existence immediately before the certificate of continuance is issued to the limited partnership are taken to have been created on that date specified in the certificate.

Regulation 6 provides that, on and from the day the certificate of continuance is issued, the limited partnership is not to be treated as a limited partnership formed under the law of a jurisdiction outside Jersey and all assets and property previously held, deemed to be held or acquired by or on behalf of the limited partnership are taken to be the property of the limited partnership held under Article 11(2) of the Limited Partnerships (Jersey) Law 1994.

The continuance of the limited partnership within Jersey does not create a new limited partnership, affect any partnership interest or affect any act done before the continuance or the rights, powers, authorities, functions or obligations of the limited partnership, any partner or any other person before its continuance.

Regulation 7 enables the Commission to publish fees and forms for the purpose of making applications under these Regulations.

Regulation 8 specifies the requirements for sufficient compliance with a requirement to provide a document if the form of the document has not been published.

Regulation 9 makes it an offence (with a maximum penalty of 2 years' imprisonment and an unlimited fine) to knowingly or recklessly make a statement that is false or misleading in any material particular.

Regulation 10 provides that these Regulations come into force on the day after they are made and remain in force for 3 years.



Jersey

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Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under the Order in Council dated 28th March 1771¹ and the Order in Council made on 14th April 1884² –

1 Interpretation

In these Regulations –

“approved form” means a form approved by the Commission;

“Commission” means the Jersey Financial Services Commission;

“declaration” means the declaration provided to the Commission in accordance with Regulation 3(1)(b) and includes all amendments made to the declaration;

“eligible foreign limited partnership” means a limited partnership, without legal personality, formed under the law of a jurisdiction outside Jersey;

“formed” includes established and registered;

“general partner” means a person who is named as a general partner in the declaration and, if more than one person is named, means each general partner;

“limited partnership” means a partnership formed under any law (including the law of a jurisdiction outside Jersey) with –

(a) one or more partners who are liable for all the debts and liabilities of the partnership; and

(b) one or more partners whose liability for the debts and liabilities of the partnership is limited;

“LP Law” means the Limited Partnerships (Jersey) Law 1994³;

“Minister” means the Minister for External Relations;

“partnership interest” has the same meaning as it has in the LP Law;

“published” means –

(a) in respect of a fee payable under these Regulations, published by the Commission in accordance with Article 15(5) of the Financial Services Commission (Jersey) Law 1998⁴; and

- (b) in any other case, published by the Commission in a manner likely to bring it to the attention of those affected;
- “registrar” has the same meaning as it has in the LP Law;
- “registrar’s seal” in relation to the registrar means a seal prepared under Article 30 of the LP Law.

2 Eligible foreign limited partnership may continue within Jersey

- (1) Subject to paragraph (2), an eligible foreign limited partnership may continue as a limited partnership within Jersey in accordance with these Regulations if the law of the jurisdiction in which it is formed does not prohibit its continuance within Jersey.
- (2) An eligible foreign limited partnership may not continue as a limited partnership within Jersey if –
 - (a) the limited partnership is being wound up;
 - (b) a receiver or manager has been appointed in relation to any of the assets of the limited partnership;
 - (c) an application has been made to a court in another jurisdiction for the winding up of the limited partnership or for the limited partnership to be subject to equivalent insolvency proceedings and has not been determined; or
 - (d) the limited partnership has been deregistered for a purpose other than continuing as a limited partnership within Jersey in accordance with these Regulations.

3 Application to continue as limited partnership within Jersey

- (1) An application for an eligible foreign limited partnership to continue as a limited partnership within Jersey must be provided to the Commission in an approved form and accompanied by –
 - (a) a copy (certified, in an approved form, to be a true copy) of its certificate of formation, or another document that evidences its formation;
 - (b) a declaration naming and signed by the general partner stating that –
 - (i) the limited partnership is solvent,
 - (ii) the limited partnership has applied to the Commission for its consent to the creation of interests under the limited partnership in accordance with Article 10 of the Control of Borrowing (Jersey) Order 1958⁵,
 - (iii) the limited partnership has applied to the registrar for registration as a limited partnership under the LP Law, and
 - (iv) the limited partnership is not to have legal personality on its continuance within Jersey;
 - (c) any other documents or information as the Commission may require in respect of the application; and
 - (d) any published application fee.

- (2) The application under this Regulation must also be accompanied by evidence, satisfactory to the Commission, of the following –
 - (a) that the application to continue has been approved by the general partner;
 - (b) if the law of the jurisdiction under which the eligible foreign limited partnership is or was formed requires an authorisation to continue as a limited partnership within Jersey, that the limited partnership has obtained that authorisation.
- (3) For the purpose of paragraph (2), the Commission may rely on evidence that is a declaration signed by the general partner attesting to the matters mentioned in that paragraph.

4 Determination of application

- (1) The Commission may grant an application for continuance of a limited partnership under these Regulations if the Commission –
 - (a) is satisfied that the requirements of Regulations 2 and 3 have been met; and
 - (b) has consented to the creation of interests under the limited partnership in accordance with Article 10 of the Control of Borrowing (Jersey) Order 1958⁶.
- (2) If an application is granted, the Commission must inform the registrar as soon as practicable and deliver to the registrar the documents that accompanied the application.
- (3) On determining the application, the Commission must inform the applicant of its decision.
- (4) If requested by the applicant, the Commission must, within 14 days of the request, provide the applicant with a statement in writing of the reasons for its decision.
- (5) The Commission may, if of the opinion that it would be contrary to the public interest to register the eligible foreign limited partnership as a limited partnership within Jersey, refuse the application.
- (6) An applicant may, within 28 days after being informed of a decision by the Commission to refuse its application, appeal to the court on the ground that the decision of the Commission was unreasonable having regard to all of the circumstances of the case.
- (7) On hearing the appeal, the court –
 - (a) may confirm or reverse the decision of the Commission; and
 - (b) may make an order as to the costs of the appeal as it thinks appropriate.

5 Issue of certificate of continuance

- (1) The registrar must not register the eligible foreign limited partnership as a limited partnership under the LP Law unless the registrar has received the documents from the Commission under Regulation 4(2).

- (2) When the registrar registers the eligible foreign limited partnership as a limited partnership under the LP Law, the registrar must also –
 - (a) register the documents received from the Commission under Regulation 4(2);
 - (b) issue a certificate of continuance to the limited partnership; and
 - (c) send an electronic copy of the certificate to the appropriate official or public body in the other jurisdiction under which the limited partnership is or was formed.
- (3) A certificate of continuance issued to a limited partnership under paragraph (2) is conclusive evidence that –
 - (a) the limited partnership has complied with Regulations 2 and 3; and
 - (b) the eligible foreign limited partnership has continued as a limited partnership within Jersey under the name specified in the application from the date specified in the certificate of continuance.
- (4) A certificate of continuance issued under this Regulation must be signed by the registrar and sealed with the registrar's seal.
- (5) For the purpose of Article 10(1) of the Control of Borrowing (Jersey) Order 1958⁷, the partnership interests and any other interests under the eligible foreign limited partnership in existence immediately before the certificate of continuance is issued to the limited partnership are taken to have been created on the date specified in the certificate of continuance.

6 Effect of continuance

- (1) On and from the day that a certificate of continuance is issued to a limited partnership under Regulation 5 –
 - (a) the limited partnership is not to be treated as a limited partnership formed under the laws of a jurisdiction outside Jersey; and
 - (b) all assets and other property (including all choses in action and any right to make capital calls of the limited partnership) previously held or deemed to be held or acquired by or on behalf of the limited partnership are taken to be the property of the limited partnership held under Article 11(2) of the LP Law.
- (2) The continuance of the limited partnership does not –
 - (a) create a new limited partnership;
 - (b) affect any partnership interest; or
 - (c) affect any act done before the continuance or the rights, powers, authorities, functions or obligations of the limited partnership, any partner or any other person before its continuance.
- (3) Without limiting paragraphs (1) or (2) –
 - (a) no conviction, judgement, ruling, order, claim, debt or liability due or to become due, and no cause existing, in favour of or against the limited partnership or in favour of or against any partner or other person in relation to the limited partnership, is to be released or impaired by its continuance as a limited partnership under these Regulations; and

- (b) no proceedings, whether civil or criminal, pending at the time of the issue of a certificate of continuance by or against the limited partnership or any partner or other person in relation to the limited partnership, are to be abated or discontinued by its continuance as a limited partnership under these Regulations, but the proceedings may be enforced, prosecuted, settled or compromised by or against the limited partnership or by or against the partner or other person.

7 Fees, charges and forms

- (1) The Commission may require the payment to it of a published fee in respect of an application made under these Regulations.
- (2) The Commission must not determine an application unless it is accompanied by the published application fee.
- (3) The Commission may publish forms and other documents to be used for the purposes of these Regulations together with details of the manner in which any such document to be provided to the Commission is to be authenticated.

8 Form of documents to be delivered to registrar

Where a document is required to be provided to the Commission under these Regulations, but the form of the document has not been published, it is sufficient compliance with that requirement if –

- (a) the document is delivered in a form that is acceptable to the Commission; or
- (b) any information to which the requirement relates is delivered in material, other than a document, which is acceptable to the Commission.

9 Offence of providing false or misleading information etc

- (1) A person who, in or in connection with any document, material, evidence or information that is required to be provided to the Commission under these Regulations, knowingly or recklessly makes a statement that is false or misleading in any material particular commits an offence and is liable to imprisonment for 2 years and a fine.
- (2) Where an offence under paragraph (1) committed by a limited partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership; or
 - (b) any person purporting to act in such a capacity,the person also commits the offence and is liable in the same manner as the limited partnership to the penalty provided for that offence.
- (3) Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under paragraph (1) is liable to the penalty provided for that offence.

10 Citation and duration

- (1) These Regulations may be cited as the Limited Partnerships (Continuance) (Jersey) Regulations 202-.
- (2) These Regulations come into force on the day after they are made and remain in force for 3 years.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 15.120</i>
<i>2</i>	<i>chapter 16.700</i>
<i>3</i>	<i>chapter 13.500</i>
<i>4</i>	<i>chapter 13.250</i>
<i>5</i>	<i>chapter 24.150.50</i>
<i>6</i>	<i>chapter 24.150.50</i>
<i>7</i>	<i>chapter 24.150.50</i>