

THE JERSEY LAW COMMISSION



REPORT

THE JERSEY LAW OF PARTNERSHIP

To be laid before the Head of the Legislation Advisory Panel pursuant to the Proposition to establish the Commission approved by the States on 30 July 1996

The Jersey Law Commission was set up by a Proposition laid before the States of Jersey and approved by the States Assembly on 30 July 1996.

The Commissioners are:-

Mr David Lyons, English Solicitor, *Chairman*

Advocate Alan Binnington

Mr Clive Chaplin, Solicitor

Mr Peter Hargreaves, Chartered Accountant

Advocate Kerry Lawrence

Advocate John Kelleher

The address of the Jersey Law Commission is PO Box 404, Whiteley Chambers, Don Street, St Helier, Jersey JE4 9WG and its internet pages are within the Jersey government's website www.lawcomm.gov.je

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To the Chief Minister of the States of Jersey

PART 1 BACKGROUND

1 The work by the Law Commission on the Jersey Law of Partnership aimed to answer a number of questions:

- (a) does Jersey have a law of partnership and/or does it recognise partnerships in its customary law?
- (b) If so, where in the customary law is the law of partnership set out?
- (c) If Jersey does have a law of partnership, what is its content and scope?
- (d) Is the content and scope of the customary law of partnership comprehensive?
- (e) If gaps exist, or the statement of the law is too old to be applicable to the requirements of a modern commercial world to what other sources should lawyers have regard?
- (f) Would the existing Jersey law, as may be identified, benefit from modernisation, and if so, in what areas and by what means? Would Jersey benefit from a Partnership (Jersey) Law, which sets out clearly the content of the law?

2 The Consultation Paper of May 2008, presented the following provisional conclusions to those questions:

- (a) it was clear that the existence of the law of partnership in Jersey a customary law was acknowledged.

- (b) The volume of reported judicial decisions dealing with partnership law issues is not great and therefore recourse has to be had to the customary law authors in that field, which in this case are Pothier and Domat. A caveat applies pursuant to Cannon v Nicol [2006] JLR299 in that where the content of the Jersey law of partnership has not already been declared by judicial decision, the Court will not feel itself bound to one author or source, even if it is to that source that regard is normally had in that field of law, in the event it considers the law stated there to be inappropriate to the needs of modern day Jersey.
- (c) The content and scope of the Jersey law of partnership was set out (Section D of Consultation Report).
- (d) The almost complete reliance on the work of authors of the 16th and 17th centuries to inform the field of partnership law in Jersey could not be considered an optimal position in a high quality modern commercial jurisdiction. Irrespective of the quality of those authors, one could not hope that they considered partnership issues in the context of the modern world so there would inevitably be both gaps in consideration of issues, and approaches to issues which were simply no longer appropriate (a problem in fact identified in Cannon v Nicol).
- (e) Having considered the law of partnership of various other jurisdictions (England, Scotland, other Commonwealth jurisdictions and France) the law of England was the most appropriate jurisdiction to look to for guidance in this field absent local authority, and English cases should be able to be referred to as persuasive before the Jersey Courts.
- (f) Jersey would benefit from a modern statutory expression of the law of partnership. The English 1890 Partnership Act (the “1890 Act”) would clearly form an appropriate basis. The areas of difference identified between English and Jersey law would have to be addressed and a decision made as to which was more suitable for modern day Jersey. The introduction of such a law in Jersey would also afford an opportunity to improve upon the 1890 Act. That was a matter for

another day and another report, but the work already done by the English and Scottish Law Commissions in this area would undoubtedly be of value.

- 3 Two responses were received to the Consultation Paper.
 - 3.1 One response noted a possibility that partnerships (sociétés) may at least at some point in Jersey law been acknowledged as having some form of separate legal personality. Reference was made to a note of an 1894 case on parish rates, where the defendant had been named as “*Voisin et Cie*” rather than “*Voisin et autres, faisant commerce sous la raison sociale; Voisin et Cie*”, and where one might perhaps infer from the decision an obligation on the société to pay the rates rather than a liability to be assessed directly against the names of the participating members.
 - 3.2 Whilst considering that is a very interesting and helpful observation, it is the view of the Commission that:
 - (a) the priority must be to have a Partnership (Jersey) Law placed on the statute book as soon as possible.
 - (b) The above glimpse of a potentially different approach existing at some point in time (though clearly not for any years) can be fed into a review once there is a statute in place. That subsequent review might also take account of the fact that a separate legal personality for a partnership (as already exists under Scottish law) was one of the recommendations of the report of the English and Scottish Law Commission for revision of the 1890 Act.
 - (c) Further research which might bring to light more ancient references indicating that Jersey law at one time did perhaps bestow some form of separate legal personality to partnerships could be relevant to a decision on this point, though it is anticipated that pursuant to the Cannon v Nicol approach, it would be the current commercial and legal pros and cons of such a change that would very likely be the

decisive factors in such a decision irrespective of what may or may not possibly have been the law over a century ago.

- 3.3 The other response suggested that if the Jersey law of partnership is to be reviewed and any amendments introduced to improve upon the current law, consideration could be given to expanding the definition of a partnership to permit a non-trading partnership to be set up with a view to partners realising or making 'an economy'. A non-trading partnership is already permitted in the definition of partnership under Jersey law (which allows for partnerships to hold an asset in common). It was suggested that an expansion in this manner may encourage further corporate utilisation of partnerships. A similar change was introduced into French law in 1985.
- 3.4 The Commission welcomes this input, and as with the first comment, considers that this would be a matter to be reviewed at a later date once there is a statute in place.

PART 2 CONCLUSION

- 4 The conclusions of the Commission are as follows:
- (a) the Jersey law of partnership would benefit from being presented in statutory form.
 - (b) In the interim, the nexus with English law as identified in the Consultation Paper should permit recourse to English authority for assistance in the absence of local authority on point.
 - (c) In relation to a local statutory expression of the law, the 1890 Act clearly forms an extremely useful basis, and has been utilised in many other Commonwealth jurisdictions, including Guernsey.
 - (d) A consideration of how the 1890 Act and the law in this area might be improved upon to produce a statute which better reflected the needs of a 21st Century offshore finance centre is a much larger project and may

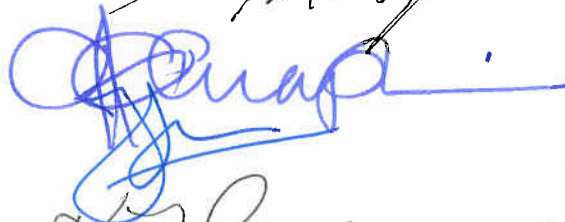
be the subject of further Law Commission review when time permits. .
The reviews that have taken place of the 1890 Act, in particular by the
English and Scottish Law Commissions would undoubtedly be useful
in that regard, as would comment and suggestions from local
practitioners. The first priority however must be to have a statute on
the books reflecting the current position.



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APPENDIX A

PERSONS WHO COMMENTED ON THE CONSULTATION PAPER

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APPENDIX B

ACKNOWLEDGEMENTS

The Commission would again like to express its grateful and sincere thanks to Michael Heywood and Marcus Flavin, both of Radcliffe Chambers, Lincoln's Inn, and to Timothy Clemens-Jones of the Paris office of Holman, Fenwick and Willan for their careful research and detailed reports upon which the Commission has drawn heavily in producing this paper.

The Topic Commissioner for this case was Kerry Lawrence.