



## Guide to Limited Partnerships in Guernsey

## TABLE OF CONTENTS

Preface.....	2
1. FORMATION OF THE LIMITED PARTNERSHIP .....	3
2. THE PARTNERSHIP AGREEMENT .....	3
3. NAME OF PARTNERSHIP .....	4
4. SEPARATE LEGAL PERSONALITY.....	4
5. REGISTERED OFFICE.....	4
6. REGISTERING THE PARTNERSHIP.....	4
7. TAX.....	5
8. GENERAL PARTNERS.....	5
8.1 Liability of General Partners .....	5
8.2 Power of General Partners.....	5
9. LIMITED PARTNERSHIPS.....	6
9.1 Liability of Limited Partners.....	6
9.2 Profits and Contributions .....	6
9.3 Dealing with the Limited Partnerships.....	7
9.4 Rights to Information .....	7
10. ADMISSION OF NEW PARTNERS AND TRANSFER OF INTERESTS.....	7
11. THIRD PARTIES DEALING WITH A LIMITED PARTNERSHIP .....	8
12. DISSOLUTION.....	8
13. ONGOING OBLIGATIONS .....	9
14. CONCLUSION .....	9

## PREFACE

Limited partnerships in Guernsey are governed by The Limited Partnerships (Guernsey) Law, 1995 (the “**Law**”). Limited partnerships are a useful vehicle for investors in that they grant the benefit of limited liability but do not impose the rigid structure of a company.

Guernsey limited partnerships are used for a number of reasons including:

- as part of international tax planning arrangements utilising the fiscal transparency of the limited partnership concept;
- as vehicles for private equity and venture capital schemes;
- as components in asset protection arrangements; and
- as vehicles for collective investment funds in Guernsey.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have. The Guide is intended to provide an overview of the subject matter covered and a starting-point for a more detailed and comprehensive discussion of the issues. If you require further information, please contact one of the Appleby Guernsey team whose details are at the end of this Guide.

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St Peter Port, Guernsey  
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## **1. FORMATION OF THE LIMITED PARTNERSHIP**

Forming a Guernsey limited partnership is relatively straightforward. The formation of a limited partnership requires one or more general partners (who are liable for all the debts and obligations of the limited partnership) and one or more limited partners (whose liability is limited to the value of their agreed capital contribution).

There is no upper limit on the number of partners. Limited liability companies can participate either as general or limited partners and there is no partnership law requirement that a general partner be resident or incorporated in Guernsey. A general partner may also be a limited partner.

There is no requirement for the consent of the Guernsey Financial Services Commission (the “Commission”) to be given in order to form a limited partnership but if the limited partnership is proposed as a vehicle for a collective investment scheme, authorisation will need to be obtained under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended; for the limited partnership as a fund where the general partner of a fund limited partnership is Guernsey based, it would also need to be licensed to carry out such activities.

## **2. THE PARTNERSHIP AGREEMENT**

Every limited partnership will have a partnership agreement setting out, in writing, the affairs of the partnership and the conduct of its business. The partnership agreement will usually include, amongst other things:

- the purposes for which the partnership is established;
- the powers and obligations of the general partner in relation to the partnership including, in particular, the general partner’s obligations in respect of the management of the partnership and any limitations on its authority;
- the liability of the general partner to contribute to the debts of the partnership;
- the method and procedure for admission of new partners to the partnership and the retirement of existing partners;
- the extent of liability of each of the partners to make contributions to the partnership;
- the procedure for the transfer of interests in the partnership;
- the maintenance of accounting and other records of the partnership; and
- the allocation and distribution of the capital and profits of the partnership between the partners.

The Law provides that certain powers may be exercisable only if provided for or consented to in the partnership agreement and the exercise of certain rights is subject to the terms of the partnership agreement. The Law also requires that the partnership agreement include certain statutory rights.

It is therefore important that a partnership agreement is always reviewed against the Law to ensure that the rights, powers and obligations that are proposed are not restricted in any way by the terms of the Law or have adverse consequences for any of the partners in the limited partnership. Where the provisions of the partnership agreement are inconsistent with the Law, the Law will prevail.

### **3. NAME OF PARTNERSHIP**

The name of a limited partnership must end with the words “Limited Partnership” or either of the abbreviations “LP.” or “L.P.”. As a general rule, the partnership name should not include the name, or a significant part of the name, of a limited partner.

### **4. SEPARATE LEGAL PERSONALITY**

In Guernsey, a limited partnership may choose to have a separate legal personality. The limited partnership will have a continuous existence whether or not it exists separately, but on registration the general partner(s) must elect whether the limited partnership is to have separate legal personality.

Election to have legal personality may only be made at the time of registration of the limited partnership and, once made, it is irrevocable. Failure to make such an election at the time of registration shall be final. A limited partnership which has elected to have separate legal personality is a body corporate.

Under Guernsey law, a limited partnership with separate legal personality is transparent for tax purposes.

### **5. REGISTERED OFFICE**

The limited partnership must have a registered office in Guernsey and must give notice to the Registrar when it changes its registered office.

### **6. REGISTERING THE PARTNERSHIP**

A declaration must be filed in Guernsey with the Guernsey Registry, signed by one or more of the general partners, stating:

- the name of the limited partnership;
- the nature and principal place of business;
- its registered office address in Guernsey;
- the full name and address of every general partner; and
- the duration of the partnership.

If no duration is specified, a statement to that effect must be included and, unless the partnership is dissolved earlier, it will be deemed by the Law to expire 30 years from the date of registration.

If the limited partnership wishes to elect to have a separate legal personality, the general partners must include such a statement in the declaration submitted to the Registrar.

A registration fee of £350 is payable.

The names and addresses of the limited partners do not need to be provided to the Registrar and therefore are not a matter of public record. Similarly, the partnership agreement is not provided to the Registrar and is therefore not available to the public.

On receipt of the declaration(s) and fee, the Registrar will register the limited partnership and issue a certificate of registration to the general partners. In default of registration, the partnership is deemed by law not to be a limited partnership.

Same day registration is sometimes possible if documents are delivered to the Registrar before midday.

## **7. TAX**

Generally a limited partnership will be tax transparent. The effect of this is that profits and losses of the limited partnership are attributed to the partners themselves who will be taxed according to their proportionate share of such profits and losses.

The Income Tax (Guernsey) Law, 1975 provides that a limited partnership will not itself be subject to an assessment for income tax, and a non-resident partner will not be liable to Guernsey income tax except on Guernsey source income. Guernsey source income excludes income wholly derived from partnership activities with, and investments in, persons and companies which are not resident in Guernsey as well as bank deposit interest.

Where the general partner of a limited partnership is a Guernsey incorporated company, the general partner will generally be taxed at the standard rate of corporate tax in Guernsey of zero percent.

## **8. GENERAL PARTNERS**

### **8.1 Liability of General Partners**

The Law provides that a general partner has all the rights, powers and duties and is subject to all the restrictions, obligations and liabilities of a partner in a normal partnership. It also provides that a general partner has unlimited liability in respect of the limited partnership's debts and liabilities and any such liability will be joint and several between multiple general partners. However, the general partner may itself be a company in which its shareholders have limited liability.

### **8.2 Powers of General Partners**

The general partner is responsible for the general management of the partnership in accordance with the limited partnership agreement and holds any partnership assets on trust for the limited partners.

The Law states that, without the written consent of all the limited partners, a general partner has no authority to:

- do anything which makes it impossible to carry on the business of the limited partnership;
- deal in any manner with any property of the partnership or in which the partnership has any interest, or dispose of any of the rights in any such property, for any purpose other than for a partnership purpose;
- admit a person as a general or limited partner, unless the right to do so is conferred by the partnership agreement.

The Law also provides that any debt incurred by a general partner in the conduct of the business of the limited partnership shall be a debt of the partnership.

## **9. LIMITED PARTNERS**

### **9.1 Liability of Limited Partners**

The liability of a limited partner is generally limited to the amount which they have agreed to contribute to the partnership (as set out in the partnership agreement).

A limited partner shall not participate in the conduct or management of the business of the limited partnership and shall not transfer the business or, sign or execute documents or bind the limited partnership. If he does so he may be liable as a general partner for the debts incurred in the period in which he participated in the management of the limited partnership.

The Law includes safe harbour provisions such that a limited partner will not be deemed to have participated in the conduct or management of the business or a limited partnership by:

- being a contractor, agent or employee of the partnership, or of a general partner;
- acting as a director, officer or shareholder of a corporate general partner;
- acting as a partner in a partnership which itself is a general partner;
- consulting with and advising a general partner as to the business of the limited partnership;
- investigating, reviewing, approving or being advised as to the accounts or affairs of the limited partnership;
- exercising any right or power conferred on limited partners by the Law;
- acting as surety or guarantor or providing any other form of security for the limited partnership, generally or in respect of specific debts;
- approving or disapproving an amendment to the partnership agreement;
- filing the prescribed declaration to form the limited partnership with the Guernsey Registry;
- requiring the appointment or removal of an auditor or applying to the Royal Court for the appointment or removal of an auditor; or
- voting on certain matters, which are set out in the Law, including, but not limited to, the dissolution of the limited partnership, the admission, removal, retirement or resignation of a general or limited partner and the continuation of the limited partnership.

The Law goes on to say that the existence of the exemptions set out above shall not give rise to any implication that the exercise of any other right, power or function by a limited partner will necessarily, by reason of that fact alone, constitute the participation by such limited partner in the management of the limited partnership.

### **9.2 Profits and Contributions**

Limited partners have a right to share in the profits of the partnership subject to the Law and the terms of the partnership agreement.

The Law gives a limited partner an entitlement to the return of all or part of the limited partner's contribution to the partnership at the following times:

- on the dissolution of the partnership; or
- at the time or upon the occurrence of the event specified in the partnership agreement.

Limited partners are only entitled to receive a payment of profit or a return of their contribution if, at the time of payment, and immediately after, the limited partnership is solvent. The Law provides that “solvent” means that the limited partnership is able to discharge its debts in full as they fall due out of the partnership assets without recourse to any separate assets of the general partner which have not been contributed to the partnership. If this solvency requirement is not met, or in the event of the insolvency of the partnership within six months of the date of the payment, a partner will be liable for a period of one year from the date of the payment to return such payment. However, this liability will be invoked only if it is necessary in order to meet a debt of the partnership incurred during the period in which such partner’s contribution formed part of the partnership’s assets.

The method of payment in respect of the return of contributions may include the release of a further obligation to make capital contributions.

### **9.3 Dealings with the Limited Partnership**

Limited partners can lend to, borrow from or enter into a transaction with the limited partnership in addition to making capital contributions. In such case, a limited partner who is not a general partner will rank as a creditor of the limited partnership.

### **9.4 Rights to Information**

Subject to the partnership agreement, a limited partner has the right under the Law to inspect and make copies of the books and to inspect the records of the partnership. A limited partner is entitled to be given on demand true and full information of all things affecting the limited partnership and may require a formal account of partnership affairs whenever “circumstances render it just and reasonable”.

## **10. ADMISSION OF NEW PARTNERS AND TRANSFER OF INTERESTS**

The partnership agreement will normally provide a procedure for admitting additional or replacement limited partners. This will often involve a requirement that the new limited partner execute a deed of adherence under which it agrees to be bound by the terms of the limited partnership agreement.

The limited partnership agreement may also provide for the level of contributions to be made by any new limited partner. The admission of new limited partners must be done in accordance with the terms of the partnership agreement. An admission agreement must be in writing and the relevant details entered in the register of limited partners.

Subject to the provisions of the partnership agreement, the whole or a part of a limited partnership interest is assignable. An assignee of a limited partnership interest will become a limited partner on the assignee’s name being entered in the register of limited partners required to be maintained under the Law. On becoming a limited partner, the assignee will acquire all the rights and powers and be subject to all the restrictions, liabilities and obligations of the assignor of the interest, other than certain liabilities incurred by the assignor under the Law prior to assignment, such as the liability to repay profit/capital distributions, or liabilities incurred by reason of taking part in the management of the partnership. These types of liabilities will remain with the assignor notwithstanding anything to the contrary in the partnership agreement or any other agreement.

## 11. THIRD PARTIES DEALING WITH A LIMITED PARTNERSHIP

There are a number of provisions in the Law which are relevant to the position of a third party dealing with a partnership. In particular, the Law provides that legal proceedings against a limited partnership must be instituted against any one or more of the general partners and not against any of the limited partners. Service can be effected either by delivery to the general partner or by post or delivery to the registered office of the limited partnership. As referred to above, a limited partner cannot be liable to a third party for the debts of the partnership unless the partner was participating in the management of the business of the partnership.

## 12. DISSOLUTION

It is the responsibility of the general partners to wind up the affairs of the partnership unless a liquidator is appointed for this purpose by the Royal Court.

A limited partnership will be dissolved on the occurrence of certain events as set out in the Law, which include:

- the happening of any event specified in the partnership agreement;
- the expiration of the fixed term of the limited partnership unless notice of its continuance is filed with the Registrar of Companies not less than 15 days before the date of expiration (or, if no fixed term has been specified, upon the expiration of 30 years from the date of registration);
- if no term is fixed, 30 years after its registration;
- upon the agreement in writing of all the partners that the partnership be dissolved;
- on the death, legal incapacity, retirement, resignation, removal, bankruptcy or dissolution of a general partner, unless;
  - o the partnership agreement permits the partnership business to be carried on by the remaining general partners and there is at the time of the death or other said event at least one other general partner who does so carry on the partnership business; or
  - o another general partner is validly appointed to the partnership immediately upon the death or other said event; or
  - o the general partner is replaced by the unanimous agreement in writing of the remaining partners within 90 days of the death of other said event; or
- if the sole general partner retires and the limited partners are unable to find a replacement within 90 days.

A partner may apply to the Royal Court to dissolve a limited partnership and the Royal Court may order the dissolution of the limited partnership on a number of grounds including:

- it is not reasonably practicable to carry on the partnership's business in conformity with the partnership agreement;
- the partnership is insolvent;
- the affairs of the partnership are being conducted in a manner which is oppressive to any of the limited partners or prejudicial to their interests as limited partners;
- that it would be just and equitable to dissolve the partnership.

On dissolution of a limited partnership, the assets of the partnership will be distributed first to satisfy creditors, second to limited partners who are creditors but not also general partners in accordance with the Law and then in accordance with the partnership agreement. In the absence of any agreement regulating distributions on dissolution, the Law provides a specific order and priority for distributions amongst general and limited partners.

### 13. ONGOING OBLIGATIONS

The Law requires that certain records be kept at the registered office of the limited partnership and provides that these records are prima facie evidence of the particulars required to be stated therein. The records required to be maintained include:

- the partnership agreement and every amendment thereof;
- a register of limited partners, showing their full names and addresses;
- statements of the amount and dates of contributions made, and agreed to be made, by each limited partner;
- a statement of the amounts and dates of contributions returned to limited partners;
- the partnership's accounting records;
- the minutes of all meetings of general partners; and
- all documents filed with the Registrar.

Any change in the particulars of the partnership declaration filed with the Registrar of Companies and Limited Partnerships (the "Registrar") must be notified to the Registrar within 21 days together with the prescribed fee. The Registrar will then issue a new certificate of registration. This would include any change in the general partner or the general partners' details, the nature and principal place of the partnership's business, the terms for which the partnership is entered into, its registered office or the name of the partnership. In the case of a change of registered office or name, the change will only be effective once the new certificate has been issued, upon the issue of which the existing certificate shall cease to be valid.

Limited partnerships are required under the Law to maintain accounting records on a similar basis to companies, such that the financial position of the partnership is ascertainable from time to time.

The Law requires that the general partners must appoint an auditor to act in relation to the affairs of the partnership if required to do so by the partnership agreement or by limited partners with a contribution greater than 50 percent of the total contribution. An auditor is also required if the limited partnership is carrying on business or providing services as specified in the Law.

Pursuant to the Limited Partnerships (Fees and Annual Returns) Regulations, 2008, a limited partnership is required to file an annual return with the Registrar before 31 January each year together with a payment of £500. The annual return contains information on a limited partnership including its name, term, registered office, details of the general partners, confirmation of compliance with certain obligations and confirmation of appointment of auditors (if any).

### 14. CONCLUSION

Limited partnerships are flexible corporate vehicles, used in wide range of corporate transactions and which do not suffer from the prescription too often associated with companies.

There are a number of proposed amendments to the Law which will be brought into effect over the next twelve months including:

- (i) introducing mechanisms to enable limited partnerships to be formed on line;
- (ii) relaxing restrictions on the names that can be used by a limited partnership to allow the name of a limited partner to be included;
- (iii) giving the ability for a limited partnership to convert between incorporated and unincorporated status during its lifetime;

- (iv) increasing the activities that a limited partnership can do without losing the protection of limited liability, for example, by participating in an oversight committee;
- (v) permitting the amalgamation and consolidation of limited partnerships;
- (vi) permitting the migrations of limited partnerships and the conversion of other entities from and into limited partnerships; and
- (vii) introducing “protected cell” limited partnerships based on Guernsey’s protected cell company legislation.

Draft legislation is currently being prepared and will need to be carefully reviewed, but if all the proposed changes are enacted, this would provide further flexibility in the use of limited partnerships.

For more specific advice on Limited Partnerships in Guernsey, we invite you to contact one of the following:

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