



Guide to Limited Partnerships in Seychelles

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PREFACE

This is the First Edition of the Guide, which we have produced for the information of our clients and professional colleagues.

This Guide is concerned exclusively with “limited partnerships” formed under the Seychelles’ Limited Partnerships Act, 2003 (the “Act”). No reference has, therefore, been made in this guide to those partnerships established by the Seychellois for the purpose of carrying on business and trading within the Seychelles under the Seychelles Commercial Code Act. A limited partnership may be formed under the Act for any lawful purpose, provided that a limited partnership shall not carry out business in the Seychelles except so far as may be necessary for the carrying on of the business of that limited partnership outside the Seychelles.

It is recognised that this Guide will not completely answer the detailed questions that clients and their advisers may have. The Guide’s intention is to provide an outline of the Seychelles’ legal and regulatory environment in relation to limited partnerships, and to set out, briefly, the registration and/or formation procedures for the setting up of such entities. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive review of the issues covered herein.

It is also important to further note that whilst the Act contains comprehensive provisions relating to limited partnerships and shall be deemed to be the governing law of limited partnerships in the Seychelles, the Act further provides that the Seychelles’ Commercial Code Act shall also apply to limited partnerships in so far as it is not inconsistent with the provisions of the Act. Accordingly, the provisions of the Seychelles’ Commercial Code Act, in addition to the Act, need to be consulted in order to properly advise a limited partnership.

All references in this Guide to “dollars” or “\$” are to US dollars, and all references to “rupees” or “Rs” are to Seychelles rupees.

Whilst we have made every effort to ensure the accuracy of the statements made herein, we accept no liability for any errors. In all cases, expert legal advice from a qualified practitioner in the Seychelles should be obtained. Appleby would be pleased to assist in this regard.

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INTRODUCTION

A partnership refers to a relationship between two or more persons carrying on business in common with a view to making a profit. Whereas a company is treated by the law as a person distinct from its shareholders, with the liability of shareholders being limited to the amount they have agreed to pay for their shares, in a “traditional” partnership the partnership is not treated as a person separate from its partners, meaning each partner is personally liable for any partnership debts that cannot be paid out of partnership assets. As partners are personally exposed to partnership debts in a traditional partnership structure, there has been a recent shift away from traditional partnerships towards alternative commercial vehicles. This shift has been particularly strong in professional services firms (eg in the fields of law, accounting and tax). Incorporation has been a popular alternative to the traditional partnership, however many entities are choosing to maintain the partnership structure but change to a limited partnership.

This Guide focuses exclusively on limited partnerships formed under the Act, whose area of activity is limited to carrying out business outside the Seychelles except so far as may be necessary for the carrying on of the business of those limited partnerships outside the Seychelles. Such limited partnerships, under Seychelles law, benefits from substantial statutory tax advantages including the ability to receive income from sources outside of the Seychelles and distribute such income to foreign partners without incurring a Seychelles tax liability. A Seychelles limited partnership is highly-suitable for international joint venture activities.

Under the Act, a limited partnership is defined as a partnership formed by one or more general partners and one or more limited partners (§4(2)).

Any general partner (which by definition includes a corporation), without derogation to his position as such, may also take an interest as a limited partner in the same partnership, at the same time, but the partnership must always consist of at least two distinct persons (§4(2)).

While any one or more partners of a limited partnership may be resident, domiciled, established, incorporated or registered pursuant to Seychelles law or the law of any other jurisdiction, the Act requires that at least one general partner must:

- if an individual, be resident in the Seychelles;
- if a company, be incorporated under the International Business Companies Act 1994, or under the Companies Act, 1972 or registered pursuant to Part VII of the Companies Act, 1972 , or the Companies (Special Licences), Act 2003; and/or
- if a partnership, be a limited partnership or a partnership formed under the Seychelles Commercial Code Act.

1. The Limited and General Partner

a. The Limited Partner

In general terms, a limited partner contributes to the capital of the business but is not liable for the debts and obligations of the limited partnership (unless that person is also a general partner) and does not generally take part in the conduct of and control of the limited partnership’s business.

In that respect, the Act sets out a non-exhaustive list of the kinds of action a limited partner may perform which shall not constitute taking part in the conduct of the limited partnership’s business namely in virtue of the limited partner (§7(5)):

- being a contractor or an agent or employee of the limited partnership or of a general partner or acting as a director, officer or shareholder of a corporate general partner;

- consulting with and advising a general partner with respect to the business of the limited partnership;
- investigating, reviewing, approving or being advised as to the accounts or business affairs of the limited partnership or exercising and right conferred under the Act;
- acting as a surety or guarantor for the limited partnership either generally or in respect of specific obligations;
- approving or disapproving an amendment to the partnership agreement; or
- voting as a limited partner on any matter.

If, however, the limited partner takes part in the conduct of the business of the limited partner ship in its dealings with persons who are not partners, that limited partner shall be liable, in the event of the insolvency of the limited partnership, for all debts and obligations of that limited partnership incurred during the period in which he so participates in the conduct of the business as though he were for such period a general partner (§7(4)).

The limited partner will generally contribute to the partnership in the form of cash, property or services and has a right to the return of their contribution and to receive a share of the profits or other compensation as set out in any partnership agreement in force between the partners from time to time.

For further information, please refer to the contact details at the end of this Guide.

b. The General Partner

In accordance with the Act, one or more general partners shall be responsible for the control, administration and management of the limited partnership's business. In the event the assets of the limited partnership are found to be inadequate, general partners shall be liable for all the debts and obligations of limited partnership (§4(2)). The general partner is also responsible for the signing on behalf of the limited partnership of any letters, contracts, deeds instruments and documents (§7(1)).

A general partner therefore has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a general partnership. A general partner is further subject to any provisions regulating their conduct as may be set out in any partnership agreement in force between the partners from time to time.

A general partner is required, under the Act, to at all times act in good faith in the interest of the limited partnership (§4(3)), the more so since any debt or obligation incurred by a general partner in the conduct of the business of a limited partnership shall be a debt or obligation of the limited partnership.

For further information, please refer to the contact details at the end of this Guide.

PART A: FORMATION OF A LIMITED PARTNERSHIP

1. Constitution of a limited partnership

a. Purpose of the Limited Partnership

A limited partnership may be formed under the Act for any lawful purpose, provided that a limited partnership shall not carry out business in the Seychelles except so far as may be necessary for the carrying on of the business of that limited partnership outside the Seychelles (see §4(1)).

A limited partnership under the Act must therefore carry out its business activities outside the Seychelles save and except where necessary to fulfil the objectives of the limited partnership which shall, at all times, be offshore activities.

b. Name and Registered Office

Every limited partnership shall have a name which shall include the words “Limited Partnership” or the abbreviation “L.P.” or “LP” and may include the name of any general partner or limited partner or any derivation thereof (see §6(1)).

Every limited partnership shall have a registered office in the Seychelles for the service of process and delivery of all notices and communication (see §6(2)).

c. Establishment of the Limited Partnership

A limited partnership shall be formed by one or more general partners and one or more limited partners (§4(2)).

Any general partner (which by definition includes a corporation), without derogation to his position as such, may also take an interest as a limited partner in the same partnership, at the same time, but the partnership must always consist of at least two distinct persons (§4(2)).

While any one or more partners of a limited partnership may be resident, domiciled, established, incorporated or registered pursuant to Seychelles law or the law of any other jurisdiction, the Act requires that at least one general partner must:

- if an individual, be resident in the Seychelles;
- if a company, be incorporated under the International Business Companies Act 1994, or under the Companies Act, 1972 or registered pursuant to Part VII of the Companies Act, 1972, or the Companies (Special Licences), Act 2003; and/or
- if a partnership, be a limited partnership or a partnership formed under the Seychelles Commercial Code Act.

The act further provides that a partnership shall not be deemed to be a limited unless registered in accordance with §9(1) of the Act.

d. Registration under §9(1) of the Act

Registration of a limited partnership, under §9(1) of the Act, may be effected by

- i. paying to the Registrar of Limited Partnerships (the Registrar) the prescribed registration fee (set out below); and

- ii. filing with the Registrar the prescribed statement (the Registration Statement) by or on behalf of a general partner containing the following particulars:
- name of the limited partnership;
 - general nature of the business of the partnership;
 - address in Seychelles of the registered office of the limited partnership;
 - the full name and address of the designated general partner, and of any other general partner and, in the case of a corporate general partner, annexing to the Registration Statement a certificate of incorporation or registration and a certificate of good standing or similar document under the laws of the jurisdiction or incorporation or, where applicable, a certificate of good standing and a certificate of registration under Part VII of the Companies Act, 1972; and
 - a declaration that the limited partnership shall not carry on business in the Seychelles except so far as may be necessary for the carrying on of the business of that limited partnership outside Seychelles.

e. Registration Fees

Any application for registration must be accompanied by the prescribed registration fee of US\$200.

f. Term of Partnership to be set out in Partnership Agreement

The terms of the partnership as may be agreed between the partners from time to time is usually set out in a partnership agreement as prescribed under the Act.

While the governing law of limited partnerships in the Seychelles remains the Act, a partnership agreement may be deemed to be the governing agreement by and between the partners which provides for the establishment and regulation of the affairs of a limited partnership, the conduct of its business and the rights and obligations of the partners among themselves. The Seychelles' Commercial Code Act shall also apply to limited partnerships in so far as it is not inconsistent with the provisions of the Act.

For further information, please refer to the contact details at the end of this Guide.

g. General Partner to Hold Register of Limited Partnership Interest

The designated general partner shall, at all times, maintain at the registered address of the limited partnership a register containing the following particulars:

- the name and address of each partner;
- the amount of contribution or contributions by each partner;
- the date the contribution or contributions were made by each partner; and
- the date of any payment representing a return of any part of the contribution of any partner.

This register shall be made available for inspection and copying free of charge of any particulars to any partner upon request to do so.

h. Other Statutory Filings to the Registrar

- A Limited Partnership shall file annual returns certifying compliance with the Act.
- In the event that during the continuance of a limited partnership, changes are made to the filed statement, the general partner must file the stated changes with the Registrar within 60 days of the said change.

- In the event that a general partner ceases to be a general partner, a statement signed by another general partner in respect of the arrangement or transaction shall be filed with the Registrar within 15 days of the arrangement or transaction. Unless such statement is filed, the arrangement or transaction, and the partnership agreement will be of no effect. Anything which seeks to relieve a general partner his obligations shall have no effect unless written consent is given by those who will be affected by the change.

i. Amendments to the Registered Particulars

Any amendments to the registered particulars must be carried in accordance with the provisions of §10(1) of the Act.

If any particulars contained in the statement filed under §9(1) are to be amended, the general partner shall have 60 days to file that change with the Registrar of Limited Partnerships.

However, if there is a change to the particulars affecting the general partner, then that change will have to be filed with the Registrar of Limited Partnerships within 15 days of such arrangement.

The name of the limited partnership can be changed and will be subject to the same procedures as set out above. However, the change in name must not contravene §6(1) of the Act.

The fees for the filing of an amendment to the limited partnership shall be the following and are contained in the Schedule to the Act and are as follows:

- \$25 if the filing is done within 30 days immediately following the amendment;
- \$50 if the filing is done within 60 days immediately following the amendment;
- \$75 if the filing is done within 90 days immediately following the amendment;
- \$100 if the filing is done later than 90 days immediately following the amendment.

PART B: PRINCIPAL STATUTORY PROVISIONS RELATING TO LIMITED PARTNERS

1. Return of Contribution and Other Sums Due

The Act provides that a limited partner is entitled to receive such share of profits or compensation by way of income, provided that after the payment is made the limited partnership is solvent and the partnership assets are sufficient to cover its liabilities (except the return of contributions to limited partners and any amounts due to general partners) (§14(1)).

In addition, a limited partner is entitled to demand the return of their contribution (where the partnership assets are sufficient to cover the liabilities) in the following instances:

- where the time specified in the Articles for its return has arrived;
- where the event specified for its return has occurred;
- on dissolution of the partnership if the partnership business is not continued;
- as otherwise set out in any partnership agreement in force from time to time; or
- with the consent of all the partners where the circumstances for return are not set out in any partnership agreement.

2. Liabilities of a Limited Partner

Generally, a limited partner is only liable for partnership debts or obligations up to the amount of their contribution. As stated above, if the limited partner takes part in the conduct of the business of the limited partnership in its dealings with persons who are not partners, that limited partner shall be liable, in the event

of the insolvency of the limited partnership, for all debts and obligations of that limited partnership incurred during the period in which he so participates in the conduct of the business as though he were for such period a general partner (§7(4)).

The following action on the part of a limited partner shall not be deemed to be taking part in the conduct of the limited partnership's business namely in virtue of the limited partner (§7(5)):

- being a contractor or an agent or employee of the limited partnership or of a general partner or acting as a director, officer or shareholder of a corporate general partner;
- consulting with and advising a general partner with respect to the business of the limited partnership;
- investigating, reviewing, approving or being advised as to the accounts or business affairs of the limited partnership or exercising and right conferred under the Act;
- acting as a surety or guarantor for the limited partnership either generally or in respect of specific obligations;
- approving or disapproving an amendment to the partnership agreement; or
- voting as a limited partner on any matter, so that the limited shall not be liable for the above actions.

If the limited partner receives their contribution in violation of the provisions of the Act (for example, where the assets of the partnership are not sufficient to cover the liabilities, and the limited partner knew at the time of receipt that this was the case), then the limited partner is liable to repay to the partnership the amount they received within a period of 6 months of the date of the payment (§14(2)).

3. Assignment of Interest by a Limited Partner

Unless otherwise provided in the Articles, a limited partner has the right to assign their interest in the partnership either absolutely or by way of mortgage (§7(9)). An assignee to the extent of such assignment, become a limited partner with the rights and subject to the obligations of the assignor in accordance with the partnership agreement and the Act in respect of the partnership interest or part thereof assigned.

No such assignee shall assume any liability of the assignor arising pursuant to its dealing with persons who are not partners in the conduct of the business of the limited partnership. Likewise no such assignment shall relieve the assignor of any liability arising pursuant to those sub-sections.

4. Person being both Limited Partner and General Partner

A partner who is both a general and a limited partner in the same partnership has all the rights, powers and restrictions of a general partner, except that in respect to their contribution as a limited partner, they have the same rights of a limited partner against the other partners.

5. Death of a Limited Partner

On the death of any limited partner, their executor or administrator has all the rights of the limited partner for the purpose of settling the limited partner's estate and constituting their assignee.

6. Admission of New Partners

After the formation of a limited partnership, additional limited partners may be admitted by making an amendment to the registered particulars with the Registrar. An amendment to the registered particulars, however, will be necessary on the admission of additional general partners.

7. Books and Records

The general partners of a limited partnership are required to maintain a register of limited partnership interests.

- the name and address of each partner;
- the amount of contribution or contributions by each partner;
- the date the contribution or contributions were made by each partner; and
- the date of any payment representing a return of any part of the contribution of any partner.

The register must be held at the registered office of the limited partnership and will not, therefore, be available for inspection by the public. The register constitutes prima facie evidence of the matters it contains. Failure by a general partner to comply with the requirement to maintain a register of limited partnership interests is an offence and may result in the imposition of a daily fine (currently US\$25) throughout the period for which the breach continues. Other than the register of limited partnership interests, a limited partnership is only required to keep such accounts and records as the partners consider necessary or desirable to reflect the financial position of the partnership.

8. Inspection of Public Documents

Any member of the public may search the file of a limited partnership at the Registry in the Seychelles, on payment of a fee, during normal office hours.

The file of a limited partnership will contain all the registered particulars, a copy of the Certificate of Limited Partnership, and where amendments have been made to the registered particulars, a copy of such amendments detailing the changes. The file will also contain details as to whether annual licence fees have been paid and any other documents required by the Act to be filed at the Registry (such as Articles of Dissolution where the limited partnership is being wound up).

PART C: TAX ADVANTAGES FOR LIMITED PARTNERSHIPS

A limited partnership is exempt from all Seychelles tax or duty on income or profits of the limited partnership.

A limited partnership is also exempt from stamp duty on property transfers, share transfers and other business transactions.

A limited partnership is further exempt from trades tax on all furniture and equipment imported into Seychelles for office use.

A limited partnership further benefits from certain exemptions under the Social Security Act.

All payments made by an international limited partnership to persons not resident in the Seychelles, and all capital gains realised with respect to any interest in an international limited partnership held by persons who are not resident in the Seychelles, are exempt from Seychelles tax or duty.

These exemptions granted under the LP Act are guaranteed for twenty years and shall continue in force thereafter unless otherwise provided for in law.

CONCLUSION

The primary benefit of the limited partnership structure in the Seychelles is that it provides a flexible vehicle for sophisticated/institutional investors who wish to participate in a partnership up to a certain fixed monetary amount with the full benefit of limited liability (a benefit not enjoyed in a traditional partnership

structure), but without having to have a direct role in the management of the partnership's affairs (a benefit which is often hard to obtain or maintain in a traditional partnership structure).

As has been proved in other leading financial jurisdictions, limited partnerships have multiple and valuable uses. They frequently feature, as part of international tax planning, as a vehicle for private equity and venture capital structures, as part of asset protection arrangements, and as vehicles for mutual funds in the worldwide.

The Seychelles limited partnership regime demonstrates the ability of the Seychelles to adapt to the challenges of the global market of commercial transactions and to offer a product which provides a tremendous number of benefits.

For more specific advice on Limited Partnerships in Seychelles, please contact the following:

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