

GUIDE TO LIMITED PARTNERSHIPS IN GUERNSEY

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PREFACE

This Guide is a summary of the law and procedures relating to Limited Partnerships in Guernsey.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Corporate team, using the [contact information](#) provided at the end of this Guide.

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1. INTRODUCTION

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.

2. WHAT IS A LIMITED PARTNERSHIP

A Limited Partnership is a formal legal arrangement between one or more General Partners and one or more Limited Partners. General Partners manage the Limited Partnership and are jointly and severally liable for all of its debts (see below), while Limited Partners contribute, or agree to contribute, a specified sum to the capital of the Limited Partnership, and are not liable for any of its debts beyond this amount so long as they refrain from taking part in its management (see below).

There is no upper limit on the number of partners and a person may be both a General Partner and a Limited Partner. There is no requirement that a General Partner be resident or incorporate in Guernsey. A body corporate may be a General Partner or a Limited Partner, provided it has the capacity to do so.

2.1 Separate Legal Personality

The Limited Partnership will have a continuous existence through its partners present and future and does not dissolve automatically on a change of Limited Partners or their inability to act.

In Guernsey, a Limited Partnership may also choose to have a separate legal personality from its partners and become a body corporate. This election 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.

Under Guernsey law, a Limited Partnership with separate legal personality is transparent for tax purposes just like a Limited Partnership without separate legal personality or a traditional partnership.

2.2 Distinction from LLPs

A Limited Partnership is not the same as a Limited Liability Partnership (**LLP**) where the liability of all the partners is limited. Guernsey introduced LLPs with effect from May 2014. The LLP structures, which combine many of the advantageous features of the company and the general partnership, are the subject of a separate publication "Guide to Limited Liability Partnerships in Guernsey".

3. FORMATION OF THE LIMITED PARTNERSHIP

Forming a Guernsey limited partnership is relatively straightforward. There is no requirement for the consent of the Guernsey Financial Services Commission in order to form a Limited Partnership unless it is proposed as a vehicle for a collective investment scheme, in which case authorisation will need to be obtained under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended. Where a General Partner of a fund is Guernsey based it also needs to be licensed to carry out such activities.

3.1 **Name of Limited Partnership**

The name of a limited partnership must end with the words "Limited Partnership" or either of the abbreviations "LP." or "L.P.". The name must not be offensive, inappropriate or misleading and should not include the name, or a distinctive part of the name, of a Limited Partner otherwise the Limited Partner may then be liable as a General Partner. If the Limited Partnership has elected to have a separate legal personality its name must end with the word "Incorporated".

3.2 **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.

3.3 **Registration**

A partnership must be registered to be a Limited Partnership rather than a traditional partnership and without registration the liability of the partners is unlimited.

The Guernsey Registrar maintains a public register of Limited Partnerships. To become registered a declaration must be filed and 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;
- a statement of election to have a separate legal personality (if so selected); and
- the duration of the Limited Partnership.

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

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 not available to the public.

On receipt of the declaration and registration fee, the Registrar will register the Limited Partnership and issue a certificate of registration to the General Partners.

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

4. **MANAGEMENT OF THE LIMITED PARTNERSHIP**

4.1 **The Partnership Agreement**

Every Limited Partnership has a Partnership Agreement setting out in writing the affairs of the Limited Partnership and the conduct of its business. The Partnership Agreement will usually include, amongst other things:

- the purposes for which the Limited Partnership is established;
- the powers and obligations of the General Partner including, in particular, in respect of the management of the Limited Partnership and any limitations on its authority;
- the liability of the General Partner to contribute to the debts of the Limited Partnership;

- the method and procedure for admission of new partners to the Limited Partnership and the retirement of existing partners;
- the extent of liability of each of the partners to make contributions to the Limited Partnership;
- the procedure for the transfer of interests in the Limited Partnership;
- the maintenance of accounting and other records of the Limited Partnership; and
- the allocation and distribution of the capital and profits of the Limited 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 to include certain statutory rights.

It is therefore important to always review a Partnership Agreement 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.

4.2 **General Partners**

A General Partner has all the rights, powers and duties of a partner in a traditional partnership and is subject to all the restrictions, obligations and liabilities.

The General Partner is responsible for the general management of the Limited Partnership in accordance with the Partnership Agreement and holds any partnership assets on trust for the Limited Partners. 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 Limited Partnership.

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 Limited Partnership or in which the Limited 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.

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.

4.3 **Limited Partners**

The liability of a Limited Partner is generally limited to the amount which they have agreed to contribute to the Limited 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 transact its business or, sign or execute documents for, or otherwise bind the Limited Partnership. If a Limited Partner does so they may be liable as a General Partner for the debts incurred in the period in which they participated in the management of the Limited Partnership.

The Law includes safe harbour provisions clarifying that the 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 Limited 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 Registrar;
- 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 and the continuation of the Limited Partnership.

The safe harbour provisions are not exhaustive: the Law goes on to say that the existence of the exemptions does not mean 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 in the management of the Limited Partnership.

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 Limited Partnership. A Limited Partner is entitled to demand true and full information of all things affecting the Limited Partnership and may require a formal account of Limited Partnership's affairs whenever "circumstances render it just and reasonable".

5. **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 executes a deed of adherence and agrees to be bound by the terms of the Partnership Agreement.

The Partnership Agreement may also provide for the level of contributions to be made by any new Limited Partner. 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 Partner's interest in a Limited Partnership is assignable. An assignee of a Limited Partner's interest will become a Limited Partner on its 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 of the assignor of the interest. The assignee also becomes subject to all the restrictions, liabilities and obligations 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 Limited Partnership. These types of liabilities will remain with the assignor notwithstanding anything to the contrary in the Partnership Agreement or any other agreement.

6. **PROFITS AND CONTRIBUTIONS**

Limited Partners have a right to share in the profits of the Limited 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 Limited Partnership on the dissolution of the Limited Partnership, or at the time or occurrence of an event specified in the Partnership Agreement.

Limited Partners may only 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 Limited Partnership's assets without recourse to any separate assets of the General Partner which have not been contributed to the Limited Partnership. If this solvency requirement is not met, or in the event of the insolvency of the Limited Partnership within six months of the date of the payment, a Limited 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 Limited Partnership incurred during the period in which such Limited Partner's contribution formed part of the Limited 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.

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 of lending to the Limited Partnership, a Limited Partner who is not a General Partner will rank as a creditor of the Limited Partnership.

7. 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 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;
- accounting records of the Limited Partnership;
- the minutes of all meetings of General Partners; and
- all documents filed with the Registrar of Companies and Limited Partnerships (the **Registrar**).

Any change in the particulars of the partnership declaration filed with the Registrar must be notified to the Registrar within 21 days together with the prescribed fee (currently £25). The Registrar will then issue a new certificate of registration (in the case of a change to the partnership's name or registered office). This would include any change in the General Partner or the General Partners' details, the nature and principal place of the Limited Partnership's business, the term for which the Limited Partnership is entered into, its registered office or the name of the Limited 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 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 Limited 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 Limited Partnership if required to do so by the Partnership Agreement or by Limited Partners with a contribution greater than 50% of the total contribution of all Limited Partners. An auditor is also required if the Limited Partnership is carrying on certain prescribed business or providing certain prescribed 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 about the 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).

8. **TAX**

Generally a Limited Partnership will be tax transparent meaning that profits and losses of the Limited Partnership are attributed to the partners themselves who are then 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 per cent.

9. **THIRD PARTIES DEALING WITH A LIMITED PARTNERSHIP**

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 post or delivery to the General Partner or the registered office of the Limited Partnership. As explained above, a Limited Partner cannot be liable to a third party for the debts of the Limited Partnership unless the Limited Partner was participating in the management of the business of the Limited Partnership.

10. **DISSOLUTION**

It is the responsibility of the General Partners to wind up the affairs of the Limited 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 not less than 15 days before the date of expiration;
- if no fixed term has been specified, upon the expiration of 30 years from the date of registration;
- upon the agreement in writing of all the partners that the Limited Partnership be dissolved;
- on the death, legal incapacity, retirement, resignation, removal, bankruptcy or dissolution of a General Partner, unless;
 - the Partnership Agreement permits the Limited 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 Limited Partnership business; or
 - another General Partner is validly appointed to the Limited Partnership immediately upon the death or other said event; or
 - 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 or creditor 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 Limited Partnership's business in conformity with the Partnership Agreement;
- the Limited Partnership is insolvent;
- the affairs of the Limited 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 Limited Partnership.

Because a Limited Partnership has continuous existence it is not dissolved by a change in Limited Partners or inability of a Limited Partner to act or by a Limited Partner giving notice to the other partners.

On dissolution, the assets of the Limited 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.

11. **CONCLUSION**

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

They can offer protection for investors who act as Limited Partners by offering them limited liability and confidentiality. The tax transparency of Limited Partnerships can also be seen as a benefit of the structure.

In addition to the Limited Partnership, since May 2014 Guernsey has offered the LLP. The new LLP combines features of flexibility of a traditional partnership with limited liability for the members of the LLP akin to that of shareholders in a company. The availability of an LLP is not restricted to any particular profession or trade and is available as an alternative business structure to suit particular needs, whether it be a professional partnership, joint venture, asset holding vehicle, management vehicle or collective investment scheme. It is also suitable for a charitable structure. Please see our separate publication "Guide to Limited Liability Partnerships in Guernsey" for more information.

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

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