

# An introduction to Guernsey limited liability partnerships

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## Introduction

A limited liability partnership (LLP) combines the flexible features of a traditional partnership with the benefit of limited liability for its members, akin to that enjoyed by the shareholders of a company.

Key features of an LLP include:

### Separate legal personality

- An LLP is a body corporate and has legal personality separate from its members.
- An LLP owns the business's assets and is liable for its own debts.
- A change in members of an LLP does not affect its continuing existence.
- A member is not liable for any debt of the LLP, or for those of any other member of the LLP, by virtue solely of their membership of the LLP.

### Flexibility

- **Business of LLP:** an LLP has unlimited capacity and may undertake any lawful business with a view to profit, or any other lawful activity, within Guernsey or elsewhere.
- **Organisational flexibility:** every member can take part in the conduct and management of the LLP, unless the members' agreement provides otherwise.
- **Contributions:** members may provide working capital to the LLP by way of capital or loan. There are no minimum capital contributions required from members.
- **Migration:** an overseas LLP may be registered as a Guernsey LLP and a Guernsey LLP can transfer its registration overseas. The re-registration provisions for overseas LLPs as Guernsey LLPs have been welcomed by English and other EU-based investment management LLPs wanting to move their seat of business outside of the EU, particularly in the context of the Alternative Investment Fund Managers Directive (AIFMD) where certain EU-based managers of alternative investment funds are required to comply with additional regulation imposed by the AIFMD in such areas as reporting, disclosure, custody, risk management, portfolio management, delegation and leverage in respect of investment funds they manage. Depending on where its investment funds are domiciled and marketed, it is possible that a move to Guernsey would put an investment manager outside the scope of the AIFMD.
- **Conversion:** general partnerships can convert to an LLP. There is provision for the States of Guernsey to legislate for the conversion of other corporate or unincorporated bodies into LLPs, and conversely, LLPs into other bodies and for the amalgamation of LLPs (although no such amendment has yet been made).

### Members

An LLP must have **at least two** members who are admitted to the LLP in accordance with the terms of the members' agreement. In principle, every member (who can be a natural person or a body corporate) acts as agent of the LLP with power to bind it although there are limits, for example, where that member is not

in fact authorised to act and the person dealing with that member either knows that he does not have the requisite authority or believe him to be a member of the LLP.

All members are entitled to an equal share in the profits and are permitted to take part in the conduct and management of the LLP, unless the members' agreement states otherwise.

Members can raise unfair prejudice and derivative claims in the situations where they believe the LLP is being run in a manner which is unfairly prejudicial to their interests (unless members have unanimously agreed to exclude those rights).

### Tax transparency

Although a Guernsey LLP has separate legal personality and can contract in its own name, for the purposes of Guernsey law it is deemed to be tax transparent and is not itself liable to tax. Each member is liable for their own tax on receipt.

### Purpose

LLPs are not necessarily targeted at a particular use or profession but are commonly used as investment management vehicles and as structures for knowledge-based professions such as accountants, lawyers, doctors, patent attorneys, brokers and translators, as well as for joint ventures – again, where joint management is contemplated. In some jurisdictions, where certain professionals are prohibited by law from incorporating as companies, the LLP has proved to be an attractive option.

### Incorporating an LLP

Application for incorporation of an LLP can only be made by a corporate service provider (a **CSP**), ie a local firm which holds a full fiduciary licence issued by the Guernsey Financial Services Commission, and in accordance with the provisions of the Limited Liability Partnerships (Guernsey) Law, 2013 (the **LLP Law**).

Application involves submission by the CSP of the following information to the Registrar of Limited Liability Partnerships (the **Registrar**):

- an **incorporation statement** setting out the name of the LLP, its registered office address (which must be in Guernsey), the nature and principal place of its business, the proposed effective date of incorporation (which is optional and must not exceed three months from the date of application) and the name and address of its resident agent (if applicable). Every person who is to be a member of the LLP must subscribe their name to the incorporation statement
- the **particulars of the governance provisions** of the members' agreement (using the template issued by the Registrar ([here](#)) (the **particulars of governance**) and
- payment of a fee ([here](#)).

The Registrar will register the LLP in the Register of Limited Liability Partnerships (the **Register**) and issue a certificate of incorporation, upon satisfactory receipt of the above information and requisite payment.

Any changes to the above information must be filed with the Registrar within 21 days beginning on the date of the change.

### Resident agent

An LLP must have a resident agent (**RA**) who is either an individual resident in Guernsey or a Guernsey CSP.

A member of the LLP who is an individual resident in Guernsey may be appointed as its RA and, if there is more than one eligible member, some or all of them may be RAs, with their functions and liabilities being joint and several.

One of the duties of an RA is to ascertain the identity of the beneficial owners in relation to the LLP and verify such information before the CSP can apply for its incorporation. The RA must submit a statement of the registered particulars for each beneficial owner to the Registrar of Beneficial Ownership together with a statement that it has taken reasonable steps to verify that information.

An LLP which is an open- or closed-ended investment scheme with the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 is exempt from the requirement to have an RA.

## LLP members' agreement and record keeping

An LLP is required to have a members' agreement which must be in writing setting out the affairs of the LLP and the conduct of its business.

The members' agreement is binding on both the LLP and its members, their assigns and upon subsequent members in the same manner as if those persons had executed the members' agreement themselves.

As with Guernsey limited partnership agreements, the members' agreement itself does not need to be filed with the Registrar but the particulars of governance (noted above) do.

The members' agreement must be kept at the registered office of the LLP together with the following, which must be accurate, maintained and up to date:

- the register of members of the LLP (**Register of Members**)
- name and address of RA (if applicable)
- members' agreement
- certificates of incorporation and change of name (if any)
- a record of its name, address of its registered office, registration number and date of registration
- a record of its members and their respective interests (separate from its register of members)
- accounting records
- minutes of all meetings of members
- all documents filed with the Registrar, including the incorporation statement and the particulars of governance.

The Register of Members must be open during ordinary business hours to the inspection of any member (without charge) and any other person (on payment of a fee). A person may also require a copy of the Register of Members (for a fee) which must be sent within five working days of the request.

An LLP is required to submit to the Registrar an annual validation containing information current as at the last day of February together with a declaration of compliance before **31 March** each year. Failure to do so is a ground for the LLP to be struck off the Register.

Failure to maintain these records or to submit the annual validation is an offence and the LLP may be issued with a civil penalty by the Registrar.

## Winding up, dissolution and striking off

### Winding up, dissolution

An LLP may be wound up:

- on the occurrence of an event specified in the members' agreement
- if the members unanimously agree that it should be wound up or dissolved or
- if the court makes an order for its winding up.

The court may also order a winding up of the LLP if it is of the opinion that:

- the LLP cannot satisfy the solvency test or is insolvent
- it is not reasonably practicable for the LLP to carry on its business in accordance with the members' agreement
- the business of the LLP is being carried on in a manner which is unfairly prejudicial to the members' interests (or any of them) or an actual or proposed act or omission of the LLP is (or would be) prejudicial (unless the members have all agreed to exclude such rights)
- the affairs of the LLP are being conducted in such a way as to defraud creditors or in an unlawful manner
- it is desirable that the LLP should be wound up for public protection or to protect the reputation of the Bailiwick of Guernsey or
- it is otherwise just and equitable to do so.

## Striking off

The Registrar may strike an LLP off the Register if it:

- is defunct
- only has one member
- fails to submit its an annual validation when due (noted above)
- fails to respond to an information request made by an RA within the time specified
- generally, in the opinion of the Registrar, has committed persistent or gross contraventions under the LLP Law
- failed to pay a civil penalty and the period in which the LLP may appeal against the decision to impose that civil penalty has lapsed or
- failed to meet its substance requirements under the Income Tax (Substance Requirements) (Implementation) Regulations, 2021 (if applicable).

## Conclusion

The addition of LLPs to Guernsey's suite of available corporate structures provides a flexible arrangement that can be used in a wide range of industries and applications and further enhances Guernsey's position as a leading offshore finance centre.

## Contacts

For further information, please get in touch with your usual Mourant contact or, alternatively, a list of contacts can be found [here](#).