

Limited Partnerships in Guernsey

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Introduction

Limited partnerships are governed by the Limited Partnerships (Guernsey) Law, 1995, as amended (the **Law**).

Formation

A Guernsey limited partnership consists of one or more general partners, who are jointly and severally liable for all of the limited partnership's debts without limitation, and one or more limited partners, each of whom is not liable for any debts of the limited partnership beyond the amount contributed or agreed to contribute (save as provided under the Law (see **General provisions as to partners** below)). A general partner's acts in connection with the business of a limited partnership bind that limited partnership in all respects.

The Law provides that every Guernsey limited partnership must have a partnership agreement which has to be an agreement in writing of the partners as to the affairs of the limited partnership and the conduct of its business. That partnership agreement will be binding upon the partners, their assigns and subsequent partners in the same manner as if they had themselves executed it. Any amendments to the partnership agreement must be made in writing.

The name of a limited partnership must, amongst other things, include the words 'Limited Partnership' or the abbreviation 'L.P.' or 'LP' and must not form or use the name (or a distinctive part of the name) of a limited partner. A limited partner who knowingly permits their name (or a distinctive part of their name) to be used in the name of a limited partnership will be liable as a general partner to any person who extends credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

A limited partnership established in Guernsey must be registered in accordance with the Law. The Registrar of Companies (the **Registrar**) administers limited partnerships on behalf of Her Majesty's Greffier and maintains a register of limited partnerships (the **Register**) at the Guernsey Registry (the **Registry**), which is open to public inspection. Failure to register a limited partnership with the Registrar will result in it being deemed by law not to be a limited partnership and each limited partner will not obtain limited liability status.

Registration is effected by filing at the Registry a declaration by one of the general partners containing certain information, including the name of the limited partnership, the nature and principal place of its business, its registered office (which must be in Guernsey), the full name and address of each general partner, the duration of the limited partnership (which may be unlimited), the date of its commencement and whether the limited partnership elects to have a separate legal personality (see below) together with a registration fee (currently £350). Upon receipt of the general partner's declaration and prescribed fee, the Registrar will register the limited partnership in the Register, allocate a registration number and issue a certificate of registration.

Note that there is no requirement to register the names of the limited partners or to file a copy of the partnership agreement.

Any changes to the information contained in the general partner's declaration filed with the Registry, including any change to the general partner, must be notified to the Registrar within 21 days of the change in writing by any one or more of the general partners. Note that changes to limited partners and amendments to the partnership agreement do not need to be notified to the Registrar. However, any change to the limited partnership's name or its registered office will not be effective until the Registrar has issued a new certificate of registration.

As already mentioned, a limited partnership may elect, at the time of its registration, to have a separate legal personality and the certificate of registration will state that fact. If a limited partnership has separate legal personality its name must contain the word 'Incorporated' or any cognate expression approved in writing by the Guernsey Financial Services Commission (the **Commission**) at the end of its name.

A limited partnership will have a continuous existence until its dissolution, whether or not it opts for a separate legal personality.

General provisions as to partners

A limited partner must not participate in the conduct or management of the business of a limited partnership or transact the business of, sign or execute documents for, or otherwise bind the limited partnership. However, a limited partner may inspect the books of the limited partnership, examine and enquire into the state and prospects of the limited partnership business and advise all the partners on those matters. If a limited partner exceeds these restrictions, its liability as a partner will be the same as that of a general partner in respect of all debts incurred while that limited partner acted in excess of those restrictions.

There are however a number of matters that a limited partner may undertake without incurring liability as a general partner, also known as the 'White List'. For example, a limited partner may act as a director, officer or shareholder of a corporate general partner, a limited partner may consult with and advise the general partner as to the limited partnership's business and a limited partner may act as a surety or guarantor for the limited partnership, either generally or in respect of specific debts.

Unless the partnership agreement provides otherwise, a limited partner has the same right as a general partner to inspect, copy and take extracts from the limited partnership books at all times, to be given true and full information of all things affecting the limited partnership, to be given a formal account of the limited partnership's affairs if the circumstances render it just and reasonable to do so and, notwithstanding anything to the contrary in the partnership agreement, to apply to the Royal Court to have the limited partnership dissolved under certain circumstances (see **Dissolution** below).

A general partner may only admit further partners to the limited partnership with the written consent of all limited partners unless the right to do so is permitted by the partnership agreement. Any admission must be in accordance with the provisions of the partnership agreement, by execution of an agreement in writing and must be entered in the register of limited partners. Where there is more than one general partner, decisions are made by majority (subject to the provisions of the partnership agreement).

There are particular provisions relating to a return of a limited partner's contribution. A distribution of any assets of a limited partnership to a limited partner will be deemed to be a return of contribution to the extent that the distribution reduces the value of their share in the limited partnership's assets, calculated on the basis of the value of the limited partnership's net assets, below the value of the amount they originally contributed or which they agreed to contribute. A limited partner may demand the return of their contribution either on the dissolution of the limited partnership or at such time or upon the occurrence of any event specified in the partnership agreement provided that the limited partnership is solvent at the time of, and immediately following, the making of the payment. If the limited partnership is insolvent at the time of, or immediately following such a payment, or the limited partnership becomes insolvent within a period of six months immediately after such payment, the payment will be repayable to the limited partnership for a period of one year from the date of its receipt by the limited partner to the extent necessary to discharge any partnership debt incurred at a time when their contribution formed part of the limited partnership's assets.

The interest of a limited partner is assignable in whole or in part (subject to the provisions of the partnership agreement). Any such assignment, which will not cause the dissolution of the limited partnership, must be made in accordance with the requirements (if any) of the partnership agreement. A limited partner will cease to be a limited partner upon the valid and absolute assignment of the whole of their partnership interest and their removal from the register of limited partners after which time they will no longer be entitled to exercise any right or power of a limited partner. The limited partner will however continue to be liable in certain circumstances specified under the Law.

A general partner will cease to be a general partner (subject to the provisions of the partnership agreement) if they resign, retire or are removed in accordance with the partnership agreement, or if the general partner becomes bankrupt or (being a natural person) dies or becomes legally incapable or, being a corporation or separate partnership, is dissolved or, in the case of a general partner who is acting as such by virtue of being a trustee of a trust, the termination of the trust.

Conduct of limited partnerships

The original or a copy of certain documents must be kept at the limited partnership's registered office, including the partnership agreement and every amendment to it, a register of all persons who are limited partners showing their full names and addresses, details of the capital account for each limited partner, certain accounting records of the limited partnership, minutes of all meetings of the general partner and all documents filed with the Registry, which includes the general partner's declaration. The accounting records may be kept elsewhere if the general partner thinks fit but if kept at a place outside of Guernsey, the accounts and returns in respect of the business dealt with in them shall be sent to and kept in a place in Guernsey and, subject to anything to the contrary in the partnership agreement, be available for inspection by any partner during ordinary business hours. The Law requires limited partnerships to maintain accounting records so that the financial position of the limited partnership is ascertainable from time to time.

The Limited Partnership (Fees, Annual Validations and Miscellaneous Provisions) Regulations, 2016 (the **Regulations**) require that every limited partnership file an annual validation with the Registry between 1 June and 30 June each year (except limited partnerships registered before 1 May in that year) and that a copy of each such annual validation is also kept at the limited partnership's registered office.

A notice stating the name of a limited partnership must be displayed in legible characters either outside its registered office (which must be in Guernsey) or in a conspicuous position in a place within its registered office to which the general public has access during ordinary business hours.

Legal proceedings brought by or against a limited partnership must be instituted by or against any one or more of the general partners. A limited partner may, with leave of the Royal Court, bring proceedings on behalf of a limited partnership in certain circumstances, for example, where the general partner has, without good cause, failed or refused to do so.

Failure or refusal to make or give any statement, declaration or notice required by the Law or to execute the partnership agreement (or any amendment to the partnership agreement) or any other document relating to the business or affairs of the limited partnership may have consequences under the Law. In particular, the Royal Court may order, amongst other things, the deletion of the limited partnership from the Register.

Audit

Limited partnerships are subject to audit requirements under the Law if they are carrying on certain financial services activities. In addition, the requirement to appoint an auditor will arise if required to do so by the partnership agreement or if the limited partners who make up more than 50 per cent of the total contribution of all limited partners require such an appointment.

The qualifications for appointment as auditor, the contents of the auditor's report and its powers and duties are similar to those in respect of companies.

Dissolution

A limited partnership is dissolved upon the occurrence of any of the events specified in the partnership agreement, or upon the expiration of its fixed term (if any) or if no term is fixed for its duration, 30 years after the limited partnership's registration or by the written agreement of all partners. A limited partnership will also be dissolved if the partnership agreement does not provide for continuation of the limited partnership on the death, legal incapacity, retirement, resignation, removal, bankruptcy or dissolution of a general partner. However, the limited partnership will continue in such circumstances if there is another general partner which may continue to act (and the partnership agreement so permits) or another general partner is validly appointed immediately after such death or other event or, if there is no remaining general partner, the remaining partners agree in writing, within a period of 90 days following the date on which the general partner ceased to so act, to the continuation of the limited partnership business and to the appointment of another general partner.

Any partner or any creditor of a limited partnership, may apply to the Royal Court for an order that the limited partnership be dissolved on the grounds that, amongst other things, it is not reasonably practicable to carry on the limited partnership's business in conformity with the partnership agreement, or the limited

partnership is insolvent or that its affairs are being conducted in a manner which is oppressive to any of the limited partners or where it is just and equitable to do so. On or at any time after making an order for dissolution, the Royal Court may appoint a liquidator to wind up the limited partnership's affairs and distribute its assets. If a liquidator is not appointed, its affairs will be wound up by the general partner.

On an insolvent winding up, the Royal Court may, on the application of any creditor, partner or liquidator, declare that any current or former officer of any general partner is personally liable without limitation for the debts of the limited partnership or such part of the debts as the court may specify, in circumstances which include where any partner or creditor has been materially misled or deceived as to the solvency of the limited partnership.

Upon a winding up, the assets of a limited partnership are distributed in the following order of priority:

- to creditors other than partners
- to limited partners who are creditors and who are not also general partners
- subject to the provisions of the partnership agreement:
 - to limited partners for the return of their contributions or for the release of their obligations to make contributions
 - to limited partners for their share of the profits on their contributions
 - to general partners other than for capital and profits
 - to general partners in respect of capital and
 - to general partners in respect of profits.

Striking off

A limited partnership may be struck off the Register where:

- in relation to a limited partnership with legal personality, the Registrar has received notice from the Director of the Revenue Service (the **Director**) in relation to the limited partnership's non-compliance with its economic substance requirements (if applicable) (see **Economic substance** below) or
- the Registrar has not received an annual validation or declaration of compliance in accordance with the Regulations (as noted above).

The Registrar will notify the limited partnership of its intention to strike the limited partnership off the Register and will dissolve the limited partnership after two months from the date of the notice (unless cause is shown to the contrary). The Registrar will also publish the notice which may include the names of the partners of the limited partnership.

If a limited partnership is struck off, all property and rights vested in it or held on trust for it (but not property held by it on trust for another person) will, unless HM Receiver-General directs otherwise, become *bona vacantia* belonging to the Crown.

Where a limited partnership has been struck off, certain persons may apply to the Royal Court for it to be restored to the Register, including the limited partnership itself, any partner, creditor, liquidator or the Commission. Any such application must be made within 10 years of the date on which the limited partnership was struck off.

In certain circumstances, the Registrar may restore a struck-off limited partnership to the Register at the request of the limited partnership, any partner or creditor or of its Registrar's own motion, ie it is not necessary to apply to the Royal Court. Circumstances include where the limited partnership was struck off in error, or where an application to the Royal Court would be successful but unnecessary for the fair disposal of the matter or the restoration of the limited partnership to the Register would not prejudice any creditor or third party.

Migration

The Limited Partnership (Guernsey) (Migration) Regulations, 2020 provide for the registration of an overseas limited partnership as a Guernsey limited partnership and the migration of a Guernsey limited partnership to an overseas jurisdiction. For further information, read our Legal Update [here](#).

Economic substance

Guernsey has implemented the Income Tax (Substance Requirements) (Implementation) Regulations, 2021 which impose economic substance requirements on, amongst others, Guernsey registered limited partnerships with a place of effective management in Guernsey and which have income arising from a relevant activity. Essentially a body that is in scope has to demonstrate that it has adequate substance in Guernsey.

For further information, read our guide [Guernsey's economic substance requirements](#).

Tax

A Guernsey registered limited partnership is transparent for the purposes of Guernsey tax, whether it has elected to have separate legal personality or not.

A limited partner which is not resident in Guernsey is not liable to pay Guernsey income tax except on Guernsey source income.

All partnerships are required to register with the Director and file returns annually enclosing accounts and information confirming compliance with the economic substance requirements (if applicable). Penalties will be automatically imposed for the late or non-filing of returns.

Beneficial ownership

The Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017 extend requirements relating to the provision of beneficial ownership to a centralised, but not currently public, register in Guernsey to limited partnerships with separate legal personality from 31 December 2017. This does not apply to limited partnerships without legal personality. A limited partnership with legal personality which is an open-ended or closed-ended collective investment scheme is also exempt.

Miscellaneous provisions

The rules of law generally applicable to partnerships apply where they are not inconsistent with the provisions of the Law.

Contacts

For further information, please get in touch with your usual Mourant contact.