

Limited Partnerships in Guernsey

Preface

This memorandum has been prepared for the assistance of clients considering establishing a limited partnership in Guernsey. It is intended to provide only a summary of the main legal requirements and general principles applicable to the establishment and administration of limited partnerships. It is not intended to be comprehensive in its scope. It is recommended that a client seeks legal advice on any proposed transaction prior to taking steps to implement it.

A series of briefings on other aspects of Guernsey law have been produced by Ogier and are available on request.

This memorandum has been prepared on the basis of the law and practice as at January 2010.

Introduction

The Limited Partnerships (Guernsey) Law, 1995 (as amended) (the '**Law**') provides a statutory framework for the establishment and operation of limited partnerships in Guernsey.

A limited partnership may be an appropriate structure for a number of different purposes. A principal use is as a vehicle for investment funds, in particular for the private equity and venture capital industries. A limited partnership may be an attractive structure for various tax planning purposes. It may also provide an attractive method of trading as a partnership where it is desirable to have the flexibility to introduce partners as passive investors on a limited liability basis.

A Guernsey limited partnership may also elect to have separate legal personality.

Further limited partner interests in a Guernsey limited partnership may be listed on the Channel Islands Stock Exchange.

Tax treatment

In most cases, the principal attraction of the limited partnership for the partners will be its tax transparency. 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.

There are two particular advantages to a partner of this tax treatment. First, the partner is able to set off his share of any losses of the limited partnership against profits

from other investments. Secondly, the profits and losses of the limited partnership which are attributable to the partner will be treated for these purposes as arising in the country in which the investments of the limited partnership are made, which can enable a partner to take advantage of double tax treaties between the country of his residence and those of the investments.

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. The Income Tax Authority has confirmed to us that this applies equally to a limited partnership which elects to have separate legal personality.

Regulation

Limited partnerships which constitute closed or open-ended collective investment schemes will be subject to the investment fund regulatory regime set out in the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended) ('**POI Law**'). Accordingly, such limited partnerships will need to be either authorised or registered pursuant to the POI Law. Please see our Investment Fund briefing for more information on these procedures.

Registration of a limited partnership

Registration of a limited partnership is mandatory to distinguish it from a conventional partnership and ensure limited liability for its limited partners.

In order to register a limited partnership a declaration in the prescribed form, signed by the general partner/s and the prescribed fee of £350 must be delivered to H.M. Greffier. The declaration must state:

- the name of the limited partnership;
- the nature and principal place of its business;
- its registered office;
- the duration of the limited partnership;
- name and address of all general partners; and
- such other particulars as may be prescribed (none have been prescribed as yet).

There is no requirement to provide the names of the limited partners.

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Where it is intended that the limited partnership has separate legal entity personality, notice of such election must be made at the time of registration and such an election cannot be made at a later stage. Where a limited partnership is to have separate legal personality, its name must include the word “incorporated” or any cognate expression.

The name or a distinctive part of the name of a limited partner shall not form or be used as part of the name of a limited partnership. A limited partner who allows their name to be so used will be liable as a general partner to any person who extends credit to the partnership without actual knowledge that the limited partner is not a general partner.

The partnership agreement

Every limited partnership must have a written partnership agreement as to the affairs of the partnership and the conduct of its business, which may only be amended by an instrument in writing. The partnership agreement will ordinarily set out in detail the respective rights and obligations of the general partner/s and the limited partners. It is important to note that the Law prescribes that certain powers may be exercisable only if provided for in the partnership agreement and that the exercise of certain rights is subject to the terms of the partnership agreement.

Rights and obligations of a general partner

The Law provides as a general statement that a general partner of a limited partnership has all the rights, powers and duties and is subject to all the restrictions, obligations and liabilities of a partner in a conventional partnership. However, in relation to a limited partnership, in the absence of the written consent of all the limited partners, a general partner has no authority to:

- (a) do anything which makes it impossible to carry on the business of the limited partnership;
- (b) 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; and
- (c) admit a person as a partner, unless the right to do so is conferred by the partnership agreement.

In light of the above, it is desirable to set out the purposes of the partnership in some detail in the partnership agreement and to include a statement, that a purpose of the limited partnership is to do all such things as may be incidental to or conducive to the attainment of the general purposes of the partnership.

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. Therefore it is important that there is a clear indication as to the capacity in which a general partner is acting to ensure it is not acting in its own capacity.

The Law specifically states that the general partners are to be jointly and severally liable for all the debts (including obligations and liabilities) of the partnership without limitation. Therefore, if contributions from the partners or returns from investments are not sufficient to cover the debts of the partnership, the general partners will need to make up the shortfall.

Rights and obligations of a limited partner

(A) Contributions

A limited partner is liable under the Law to contribute to the partnership the amount agreed to be contributed by the limited partner, which will normally be set out in the partnership agreement. The Law specifically permits contributions to be made by a limited partner in money or property, but not in services or loans.

(B) Share of profits and return of contributions

The partnership agreement will normally provide for the respective entitlements of each of the limited partners to a share in the profits of the partnership and to a return of contributions.

A limited partner is only entitled to receive a return of capital if, at the time the payment is made, and immediately thereafter, the partnership is solvent. For these purposes, “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.

(C) Rights to information

Subject to the partnership agreement, a limited partner has the right to inspect and make copies of the books and to inspect the records of the partnership. More importantly, but also subject to the partnership agreement, they are 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”.

(D) Limitation of liability

A limited partner will not be liable for any of the debts or obligations of the partnership beyond the amounts so contributed or agreed to be contributed unless he participates in the conduct or management of the business of the limited partnership, or allows his name to be used in the name of the limited partnership (as outlined above). The Law sets out the activities that will

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not in itself amount to participation in the management of the partnership. These include activities such as:

- 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;
- consulting with and advising a general partner as to the business of the limited partnership;
- approving or disapproving an amendment to the partnership agreement; or
- voting as a limited partner on the acquisition or disposal of property of the limited partnership.

Admission of new partners and transfer of interests

The Law states that a person shall not be admitted to a partnership except in accordance with the partnership agreement. Further, this should occur by execution of an agreement in writing pursuant to which it agrees to be bound by the terms of the partnership agreement. It will also be necessary to enter the relevant details in the register of limited partners.

Subject to the provisions of the partnership agreement, a limited partnership interest is assignable in whole or in part. 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. 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, which will remain with the assignor notwithstanding anything to the contrary in the partnership agreement or any other agreement.

Maintenance of records and accounts, annual returns, change of particulars

The Law requires that the following records are to be maintained at the registered office of the limited partnership:

- the partnership agreement and every amendment thereof;
- a register of limited partners, showing their full names and addresses;
- the capital accounts of each partner;
- the partnership's accounting records;
- the minutes of all meetings of general partners; and
- all documents filed with H.M. Greffier.

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. Generally, limited partnerships must be audited, however, there are limited exceptions where such appointment will not be required.

Any change in the particulars of the partnership declaration filed with H.M. Greffier must be notified to H.M. Greffier within 21 days together with the prescribed fee and H.M. Greffier will then issue a new certificate of registration. 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.

More recently, regulations pursuant to the Law provide that annual returns must be submitted to the Greffier in respect of all limited partnerships by 31st January.

Dissolution of a limited partnership

The partnership agreement will normally set out the conditions and procedure for dissolution of the partnership, and it is the responsibility of the general partner/s under the Law to wind-up the affairs of the partnership, unless a liquidator is appointed for this purpose by the Court. Dissolution is effective from the date of the occurrence of the event in pursuance of which the partnership is dissolved, and notice of dissolution must be filed with H.M. Greffier and published in La Gazette Officielle within seven days. The name of the limited partnership will then be deleted from the register and the partnership's certificate of registration will cease to be valid.

Occurrences which trigger dissolution include:

- any event specified in that behalf in the partnership agreement;
- the expiration of the fixed term of the limited partnership unless notice of its continuance is filed with the Greffier not less than 15 days before the date of expiration (or, if no fixed term has been specified, upon the expiration of thirty years from the date of registration);
- 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:
 - (i) 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;

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- (ii) another general partner is validly appointed to the partnership immediately upon the death or other said event; or
- (iii) the general partner is replaced by the unanimous agreement in writing of the remaining partners within ninety days of the death of other said event.

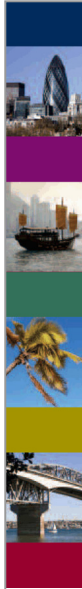
Notwithstanding the terms of the partnership agreement, it is open to a partner to apply to the Court to dissolve a limited partnership on the grounds that it is being conducted in a manner which is oppressive to any of the limited partners or prejudicial to their interests as limited partners, or alternatively 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.

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Contact details

Guernsey Legal

Caroline Chan
+44 (0) 1481 752262
caroline.chan@ogier.com

Nick Gamble
+44 (0) 1481 752257
nick.gamble@ogier.com

Roger Le Tissier
+44 (0) 1481 737150
roger.letissier@ogier.com

William Simpson
+44 (0) 1481 737163
william.simpson@ogier.com

Frances Watson
+44 (0) 1481 752240
frances.watson@ogier.com

Fiduciary

Bob Banfield
+44 (0) 1481 721672
bob.banfield@ogier.com

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