



GUERNSEY LIMITED PARTNERSHIPS

Introduction

The Limited Partnerships (Guernsey) Law, 1995 (as amended) (the “LP Law”) provides a framework for the establishment and management of limited partnerships in Guernsey. Often overlooked in favour of limited liability companies, a limited partnership is a unique entity which combines the benefits of limited liability protection for its members with a highly flexible and tax transparent corporate vehicle. Combined with Guernsey’s pragmatic financial regulation and established corporate administration infrastructure, these features have made Guernsey limited partnerships extremely popular as an offshore vehicle for private equity funds, co-investment vehicles and special purpose asset-holding vehicles.

This Red Guide gives a basic overview of the key features of Guernsey limited partnerships, including the establishment process, regulatory considerations and other features which may be relevant when considering using a Guernsey limited partnership.

When reading this Red Guide it should be borne in mind that certain amendments have been proposed to the LP Law following the issue of a consultation paper by the States of Guernsey Department of Commerce and Employment in March 2009. The consultation period ended in April 2009 and, at the time of writing, we understand that the Law Officers propose to release draft legislation shortly giving effect to those proposed changes. If you require further information on the changes proposed in the consultation paper, contact us at the contact details set out at the end of this Red Guide.

Key Features

Under the LP Law a limited partnership must consist of one or more general partners and one or more limited partners. The general partner (there is usually only one) is liable for the debts of the limited partnership without limitation. It is common to limit the potential liability of the persons associated with the general partner by using a limited liability company as the general partner. The limited partners are not liable for the debts of the limited partnership beyond the amount that they contribute or agree to contribute to the limited partnership, provided that they do not carry out certain prescribed actions under the LP Law that can have the effect of eroding their limited liability. The LP Law allows the contribution of a limited partner to be satisfied by the provision of money or property, but not by services or loans.

The actions which can erode the liability of a limited partner include the limited partner:

- Knowingly permitting his name or a distinctive part of his name to be used in the name of the limited partnership; or
- Participating in the conduct or management of the business of the limited partnership (subject to certain statutory safe-harbours) or transacting the business of or signing or executing documents for or otherwise binding the limited partnership.

The safe-harbours set out in the LP Law where a limited partner is deemed not to be participating in the management or conduct of the limited partnership include where the limited partner:

- Is a contractor, agent or employee of the limited partnership or the general partner;
- Acts as a director, officer or shareholder of a corporate general partner;

- Acts as a partner in a limited partnership which itself is a general partner;
- Consults with and advises a general partner as to the business of the limited partnership;
- Investigates, reviews, approves or is advised as to the accounts or affairs of the limited partnership;
- Exercises any right or power conferred on limited partners by the LP Law;
- Acts as surety or guarantor or provides any other form of security for the limited partnership;
- Approves or disapproves an amendment to the limited partnership agreement; or
- Votes as a limited partner on:
 - The dissolution of the limited partnership;
 - The dealing with any limited partnership property or assets;
 - The incurrence, renewal, repayment or discharge of any limited partnership debt;
 - Any change in the nature of the business, policies or objectives of the limited partnership;
 - The admission, removal, retirement or resignation of a general or limited partner and the continuation of the limited partnership thereafter; or
 - Any transaction in which the general partner has an actual or potential conflict of interest with a limited partner.

The LP Law provides that a general partner of a Guernsey 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.

Every limited partnership must have a written limited partnership agreement signed by all of its partners. It is common for the limited partnership agreement to confer wide powers and duties on the general partner to undertake the management of the business of the limited partnership and to transact on behalf of the limited partnership in furtherance of its objects.

The LP Law provides that any property of the limited partnership which is held by the general partner is held by the general partner on trust as an asset of the limited partnership in accordance with the terms of the limited partnership.

The LP Law gives limited partners the right to share in the profits of the limited partnership, subject to the terms of the limited partnership agreement and the LP Law. There is no requirement for the general partner to receive any share of the profits of the limited partnership.

One interesting feature of Guernsey limited partnerships is that they can elect whether or not to have a separate legal personality. A limited partnership which elects this option (which must be done at the time of registration) is deemed to be a separate legal entity under the LP Law. However, the Guernsey tax treatment of the limited partnership is not affected by this, as discussed in more detail below.

Establishment Process

An application to register a limited partnership can be made to the Guernsey Registrar of Companies on a same-day basis. The application must be made by or on behalf of the general partner who must file the following with the Registrar:

- A declaration signed by any one or more of the general partners stating:

- the name of the limited partnership;
- the nature and principal place of its business and registered office;
- the full name of every general partner and its address;
- the term for which the limited partnership is entered into and the date of the commencement of that term; and
- A fee of £350.

The limited partnership agreement and details of the limited partners do not need to be filed and are not a matter of public record.

Regulatory Considerations

Limited partnerships which are collective investment schemes must be approved in a more rigorous manner under Guernsey's funds legislation - the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended) (the "POI Law"). In these circumstances, any Guernsey domiciled service providers to the limited partnership such as the general partner (who acts as the fund's manager), the administrator and any custodian will also require a licence under the POI Law. For a limited partnership which is not a collective investment scheme this is not necessary, however, a licensed Guernsey administrator will usually be required to administer the limited partnership and any Guernsey domiciled corporate partners.

In addition, where the general partner receives a fee for its services to the limited partnership it may require a discretionary exemption from the Guernsey Financial Services Commission (the "GFSC") from the requirements of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (as amended).

The records of the limited partnership kept by the Guernsey Registry are maintained on its online registry

(www.guernseyregistry.com) and any required filings and amendments can be made online.

Tax Treatment

Normally the partners will want the limited partnership to be tax transparent so that the profits or losses of the limited partnership apply to the partners themselves who are taxed in accordance with the taxation regime in their home jurisdiction. This generally enables a partner to set off his share of any losses of the limited partnership against profits he has made elsewhere. It also means that (at least for Guernsey tax purposes) profits and losses will usually be treated as arising in the country in which the limited partnership's investments or assets are made.

Guernsey limited partnerships provide this benefit as they are not themselves subject to income tax in Guernsey and a non-Guernsey resident partner will not be liable to Guernsey income tax except on any Guernsey sourced income. The Director of Income Tax in Guernsey has confirmed that this treatment also applies to a limited partnership which elects to have separate legal personality, which can be a very important tool for cross-border tax planning as in these circumstances a limited partnership in effect becomes a tax-transparent body corporate.

Accounts and Audit

While every Guernsey limited partnership must keep accounting records of its activities, the accounts generally do not need to be audited unless the limited partnership is a regulated entity (i.e. a collective investment scheme) or the limited partnership agreement or a majority of the limited partners (by amount of contributions) require it to be audited.

There is generally no requirement to file the limited partnership accounts or to make them a matter of public record.

Dissolution

A limited partnership is dissolved upon the occurrence of any event specified as a dissolution event in the limited partnership agreement or otherwise on the expiry of the term specified in the limited partnership agreement. If no term is specified the limited partnership will be automatically dissolved after a period of 30 years from the date of its registration under the LP Law. In addition the limited partnership can be dissolved at any time on the written agreement of all of the partners.

On dissolution the general partner will usually be empowered to act as liquidator of the limited partnership's assets under the limited partnership agreement, which is permitted by the LP Law. The assets will be distributed first to satisfy creditors and second to the limited partners (normally in proportion to their respective contributions).

Further information and details concerning the dissolution process is available in our article entitled "[Dissolution Solutions for Limited Partnerships](#)" on the AO Hall website.

This Red Guide is only intended to give a brief summary and general overview of this area of law. It is not intended to be, nor does it constitute, legal advice and should not be relied upon as doing so. If you would like legal advice or more information in relation to the matters covered in this Red Guide or generally in relation to a corporate issue, please contact our corporate team on +44 (0)1481 723723, or by email at corporate@aohall.com. Members of our corporate team, together with their contact details, are listed on our website at www.aohall.com.

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