

Limited Partnerships (Guernsey) Law, 1995 (as amended)

Introduction

The Limited Partnerships (Guernsey) Law, 1995 (as amended) (the "Partnerships Law") was enacted to provide the finance industry in Guernsey with an additional flexible vehicle. It provides a limited liability option for a person who wishes to participate financially in a partnership up to a fixed capital amount but without taking part in the management of its affairs. Guernsey limited partnerships are commonly used in the following areas:

- as part of international tax planning arrangements utilising the fiscal transparency of the limited partnership;
- as vehicles for private venture capital and private equity schemes;
- as components in asset protection arrangements; and
- as a framework for public venture capital and private equity arrangements qualifying as collective investment funds in Guernsey.

Guernsey limited partnerships are fiscally transparent for the purposes of Guernsey taxation and non-Guernsey tax resident investors participating as limited partners in a Guernsey limited partnership are exempt from Guernsey income tax on their share of partnership profits or gains arising from business or investment activities carried on outside Guernsey. Investors in a Guernsey limited partnership will be taxed on profits accruing to them in accordance with their own circumstances.

Formation

The formation procedure for a Guernsey limited partnership is straightforward. The limited partnership must comprise at least one general partner (who is liable for all the debts and obligations of the limited partnership) from which no contribution is needed and one limited partner (whose liability is limited to the value of his agreed capital contribution).

The name of a limited partnership must contain the words "Limited Partnership" or the abbreviation "L.P." or "LP" and must not be the name or a distinctive part of the name of a limited partner. Otherwise, that limited partner risks losing its limited liability.

There is no upper limit on the number of partners in a Guernsey limited partnership and limited liability companies can participate either as general or limited partners. Depending on the use of the limited partnership, there may be a regulatory requirement to have a Guernsey general partner, although the Partnerships Law itself does not require a general partner to be resident or incorporated in Guernsey.

A declaration signed by any one or more of the general partners must be filed in Guernsey with the Registrar of Companies as Deputy HM Greffier stating the name of the partnership, the nature and principal place of its business, its registered office address in Guernsey and containing details of the general partner and the duration of the partnership. A registration fee of £350 is currently payable to the Guernsey authorities in respect of each Guernsey limited partnership. As a matter of partnership law, there is no requirement to file details of the names of the limited partners or their capital contributions in the partnership declaration. There is no requirement to file copies of the partnership agreement.

Principal features

A Guernsey limited partnership may elect to have legal personality where the general partners so elect at the time of its registration.

A Guernsey limited partnership must keep a number of statutory records which must be maintained at its registered office. However, the records are private and may only be inspected and copied by partners.

The Partnerships Law requires that an auditors' report and audited accounts must be deposited with the Guernsey Financial Services Commission (the "GFSC") within 6 months of the last day of the financial year to which the report relates. However, in practice, this requirement has never been enforced by the GFSC and limited partnerships (which are not regulated as funds) do not generally comply with this requirement.

A limited partner can contribute his capital in the form of money or other property but not in the form of services or loans.

Capital and profit distributions may be made freely in accordance with the terms of the partnership agreement. This is subject only to a solvency test with a claw-back mechanism which applies for a period of 1 year following distribution where a payment is made at a time when the partnership is insolvent or became insolvent within 6 months as a result of the payment being made.

A limited partner will lose his limited liability if he participates in the conduct or management of the business of the limited partnership. However, the Partnerships Law provides a non-exhaustive list of acts which a limited partner can carry out without being deemed to be taking part in the management of the partnership. These include:

- inspecting the books of the limited partnership;
- enquiring into the state and prospects of the partnership business; and
- voting as a limited partner on the acquisition, sale, transfer, exchange, lease or charging of or other dealing with, any property or assets of the limited partnership.

Futhermore, a limited partner will not be deemed to have participated in the conduct or management of the business of a limited partnership by reason of performing certain other functions including the following:

- 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; and
- approving or disapproving an amendment to the partnership agreement.

Regulatory requirements

A limited partnership which constitutes a fund in Guernsey must be regulated as such. A limited partnership will constitute a fund if it has all of the following features:

- the pooling of the contributions of investors in the partnership;
- spread of risk among the assets into which the partnership invests; and
- active third party management of the portfolio of assets held by the partnership.

Given these criteria, there is scope for an investment club, private investment arrangement, a structure with a limited spread of assets and trading partnerships all not to be regarded as funds in Guernsey. Please see our [Funds Briefing](#) for more information.

The general partner of a limited partnership which is regarded as a fund must be licensed under the Protection of Investors Law 1987 (as amended). Broadly, this will require a general partner which is a company to have at least two Guernsey resident directors, paid up share capital of £10,000, adequate professional indemnity and directors' and officers' liability insurance and to appoint a money laundering reporting officer and a compliance officer in Guernsey (these officers will usually be provided by the local Guernsey administrator).

Where a general partner acts as such for a limited partnership which is not a fund, consideration must also be given to the potential application of the Regulation of Fiduciaries Administration Business and Company Directors, etc (Bailiwick of Guernsey) Law 2000. Often, it will be possible to obtain confirmation from the GFSC that the general partner does not require a licence under this law in circumstances where the general partner acts as such for only one limited partnership, does not receive a fee for so acting or is otherwise not regarded as acting as a general partner by way of business. However, it is recommended to take advice on this aspect.

It should be noted that consent under the Control of Borrowing (Bailiwick of Guernsey) Ordinances 1959 to 2003 is no longer required in respect of limited partnerships.

Bedell Cristin Guernsey Partnership

Bedell Cristin has long been acknowledged as one of the leading law firms in the Channel Islands for investment fund business and is identified as one of the leading fund legal advisers in the Channel Islands both by number of funds advised and value of assets. The Bedell Cristin Guernsey Partnership comprises two partners: Mark Helyar and Kate Ovenden, each of whom has extensive experience in establishing all types of investment funds from open-ended retail funds to more private schemes and alternative investment structures, including private equity structures, property funds and hedge funds. In addition, the group comprises two assistant lawyers.

Bedell Channel Islands Limited is a category 1 member of the Channel Islands Stock Exchange, LGB (the "CISX") and, in that capacity, acts as sponsor to the listing of Guernsey and non-Guernsey investment funds on the CISX.

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