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Limited Liability Partnerships: A new form of Guernsey partnership

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Legislation for the introduction of Limited Liability Partnerships in Guernsey came into force in 2014.

A **general partnership** is the most traditional form of partnership and provides the basis for many unincorporated businesses today. Partners in such partnerships share in the profits and liabilities of the partnership on a joint and several basis.

In 1995 Guernsey introduced the concept of **limited partnerships** which drew a distinction between two types of partners: the general partner with unlimited liability and limited partners who are able to limit their liability provided that certain conditions are met. Limited partnerships rapidly became a popular structure for collective investments and private investment vehicles in place of companies and unit trusts. However, they are not always suited to the types of businesses run through general partnerships.

Many businesses continue to be structured as general partnerships for a number of reasons including the following:

- Some professional partnerships may not be permitted by the rules of their professional body to limit their liability by practising within a corporate entity
- For tax transparency purposes
- Confidentiality of arrangements, if the principals prefer not to make public filings of their personal information.

A **limited liability partnership (LLP)** may address some of these concerns thus offering a solution to those whose businesses are not suited to a pure corporate structure, whilst providing some protection against unlimited joint and several liability.

Legal personality and capacity

An LLP is a body corporate and has separate legal personality apart from its members.

An LLP has unlimited capacity.

Members

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Partners in an LLP are referred to as members. There is no limit to the number of members, subject to a minimum of two.

A person may not be a member of an LLP if he is subject to any disqualification orders restricting him or her from acting as director or being concerned with the control or management of companies or foundations.

Unlike a Jersey LLP there is no concept of a "designated member" who is required to undertake certain legal duties on behalf of the LLP.

Liability

Partners in a general partnership are jointly and severally liable for the debts of the partnership regardless of actual personal culpability.

Subject to any agreement amongst the members, a member of an LLP is not (by virtue of his membership of the LLP) liable for the debts of the LLP or any other member of the LLP.

Capital requirements

There are no statutory capital requirements for an LLP

Tax

An LLP is tax transparent.

Registration formalities

Registration may only be undertaken by a Guernsey corporate service provider (**CSP**). A CSP is regulated in Guernsey under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 for the purpose of providing corporate and other services.

All members must pre-register with the Guernsey Registry (**Registry**). Body corporates and individuals already registered with the Registry need take no further action and are able to use the registration number already allocated to them. For body corporates registered overseas it will be necessary to complete an Overseas Corporate Body application form. Similarly any individual not already registered with the Registry as a "person/director" will need to complete a "Person/Director form". Forms are available from the Registry website.

Applications to register an LLP will be made using online web forms. The forms will be in the same style as those currently used for Foundations.

Registrations will be processed within 24 hours. Same day registrations will also be available for an increased fee.

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A statement (signed by all members) containing the following information must be filed with the Registrar on registration of the LLP:

1. its name;
2. the name and address of its resident agent (if any);
3. the nature and principal place of its business;
4. its registered office address (which must be in Guernsey); and
5. any other prescribed information (**the Registered Particulars**).

There is no obligation to lodge financial information relating to the LLP with the Registrar, although such information (amongst other things) is required to be filed at the LLP's registered office and be made available for inspection by the members.

Resident agent

A resident agent is required unless the LLP falls within one of the exempt categories. The resident agent may be:

1. an individual resident in Guernsey (who is also a member of the LLP); or
2. a CSP

Ongoing filing requirements

Any changes in the Registered Particulars must be filed with the Registrar within 21 days; failure to do so will render the LLP liable to a civil penalty.

An LLP must file with the Registrar no later than 30 June each year:

1. an annual validation containing all the Registered Particulars (and any others the Registrar may direct); and
2. a declaration of compliance on payment of the prescribed fee.

Any changes during the year of any members or their details on the register of members must be notified to the Registrar within 14 days.

Doing business with LLPs

Every member of the LLP is an agent of the LLP with power to bind the LLP. The LLP is not bound by any members dealings with a third party if:

1. such member does not in fact have authority to act for the LLP; and
2. the third party was aware of that fact.

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An LLP executes documents by any member signing in the name of the LLP, as member.

LLP records

The members have access to the records maintained by the LLP including:

1. the register of members;
2. members' agreement;
3. accounting records; and
4. minutes of members' meetings.

A person who is not a member may inspect the register of members and no other information.

Conversion

The LLP Law permits the conversion of a Guernsey general partnership into an LLP, provided that the partners of the general partnership immediately prior to the conversion are the same as the members of the LLP on conversion.

Following a conversion all existing contracts of the general partnership will by operation of law be transferred to the LLP. Any debts and liabilities of the general partnership which arose prior to conversion will remain with the partners, jointly and severally.

The ability under Guernsey law to convert from a general partnership to an LLP is not currently offered in Jersey or the UK.

Limited liability partnerships in jersey

Jersey introduced the concept of limited liability partnerships in 1997. The law at the time imposed a 'capital* requirement of £5 million by way of a bond issued by a bank or other appropriate financial institution against the potential liabilities on a winding up of an LLP. This requirement was removed in January 2013.

Other provisions

Many of the provisions of the LLP Law mirror Guernsey's companies' legislation. For example there are provisions dealing with

- Capacity of an LLP
- Migrations to and from one jurisdiction with similar provisions in their laws
- Solvency test
- Insolvency and protective remedies

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These are familiar provisions in finance centres like the Channel Islands which are intended to create more flexible legal frameworks attractive to international businesses.

Forms and fees

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