

Limited Liability Partnerships in Guernsey

Insights - 14/05/2014

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Limited liability partnerships combine the flexible features of general partnerships with the benefit for its members of limited liability.

As such, it has become a vehicle of choice for professional persons in jurisdictions in which it has been introduced. However, as the LLP Law provides a flexible vehicle it may be usefully applied in a variety of commercial contexts and provide additional structuring options. As such, it is of interest to both the local and international business community.

Overview

The central characteristics of a limited liability partnership (LLP) established under the Limited Liability Partnerships (Guernsey) Law, 2013 (LLP Law) are:

- (a) an LLP is a body corporate and therefore has legal personality separate from its members;
- (b) an LLP may undertake any lawful business and has unlimited capacity;
- (c) an LLP must have two or more members admitted in accordance with the members' agreement;
- (d) members may be natural persons or bodies corporate;
- (e) an LLP is formed by being incorporated under the LLP Law and a change in members does not affect its continuing existence;
- (f) it has organisational flexibility, with members permitted to take part in the management of the LLP;
- (g) tax transparency as regards Guernsey law (in the same way as partnerships);

(h) a member is not liable for any debts of the LLP or any other member by virtue solely of his membership of the LLP;

(i) migration to and from Guernsey is permitted; and

(j) conversion from a Guernsey general partnership to an LLP is expressly provided for.

Incorporation

An incorporation statement including the name of the LLP, the name and address of its resident agent (if any), the nature and principal place of its business and the address of its registered office, which must be in Guernsey, must be submitted to the Registrar, together with the prescribed fee, currently £100 (or £350 for same day incorporation). It is possible to defer the date of incorporation by up to three months from the date of application.

Operation of an LLP

Members of an LLP may be bodies corporate or individuals. Every LLP must have a written members' agreement but the contents are not prescribed, thereby allowing considerable organisational flexibility. However, unless otherwise included within the members' agreement, the LLP Law provides that all members are entitled to share equally in the profits of the LLP and may take part in the conduct and management of the LLP.

The LLP, as a separate legal personality, owns the business's assets and is liable for its own debts. In principle, every member acts as agent of the LLP with power to bind the LLP. There are limits, for example, where that member is not in fact authorised to act.

Working capital may be provided by members to the LLP by way of capital or loan. There are no minimum capital contributions required from members.

There is no public filing requirement in relation to the members' agreement, although the LLP's register of members may be inspected or copied by any member of the public on payment of a prescribed fee. An LLP is required to submit an annual validation containing information about the LLP to the Registrar each year.

Record Keeping

LLPs are required to keep at their registered office in Guernsey a copy of:

(a) the register of members;

(b) the names and addresses of the resident agent (if any);

(c) the members' agreement;

(d) its accounting records (kept in accordance with the provisions of the LLP Law and sufficient to show the financial position of the LLP at any time);

(e) minutes of members' meetings; and

(f) all documents filed with the Registrar.

Subject to the provisions of the members' agreement, all records must be available to all members for inspection during ordinary business hours in Guernsey.

Conversion from a general partnership to an LLP

The LLP Law expressly provides for the conversion of a Guernsey general partnership into an LLP and sets out a procedure for so doing.

Migrations

There are provisions in the LLP Law permitting certain LLPs incorporated under the laws of jurisdictions other than Guernsey to migrate to Guernsey and become registered as an LLP and to migrate out. The LLP Law requires, for both migrations in and out, the consent of the Guernsey Financial Services Commission in the context of regulated businesses.

Striking off

LLPs (i) with only one member; (ii) which have failed to deliver annual validations when due; (iii) have failed to respond to information requests by resident agents; or (iv) which have, in the opinion of the Registrar, committed persistent or gross contraventions, may be struck off.

Winding up and Dissolution

An LLP commences winding up if an event specified in the members' agreement occurs, if the members unanimously agree that it should be wound up or dissolved or if the Royal Court makes an order pursuant to the LLP Law for the winding up of the LLP. Circumstances where the Royal Court may order a winding up include where the Court is of the opinion that:

- the LLP is insolvent
- it is not reasonably practicable to carry on the business of the LLP in accordance with the members' agreement

- the business of the LLP is being carried on in a manner which is unfairly prejudicial to the members (or any of them)
- where there is fraud
- if it is desirable that the LLP should be wound up, or
- where it is just and equitable to do so

Administration

The LLP Law creates a framework for administration of an insolvent LLP.

Comparative Table

We have set out a table below offering some brief comments on the key differences between a Guernsey company, a Guernsey general partnership and an LLP.

This seeks to provide, by way of general overview, a comparison of the regime applicable to LLPs, general partnerships and companies in Guernsey.

	Company with liability limited by shares	General Partnerships	Limited liability partnerships
Status	Separate legal entity.	Not a separate legal entity.	Separate legal entity.
Governing law & constitution	Companies (Guernsey) Law, 2008 (as amended).	Partnership (Guernsey) Law, 1995 (Partnership Law).	Limited Liability Partnerships (Guernsey) Law, 2013.
	Only one person is required to incorporate.	At least two partners are required to form a partnership.	At least two members are required to incorporate an LLP.

Companies must have memorandum and articles of incorporation.

There is no obligation to enter formal arrangements between partners. There are default provisions in the Partnership Law which will apply, in the absence of agreement on the point.

There must be a written members' agreement but its contents are not prescribed. There are default provisions in the LLP Law which will apply, in the absence of agreement on the point.

Member must subscribe for shares.

Entry or retirement from a partnership is normally dealt with in the partnership agreement. In the absence of which, a partnership is dissolved by a partner giving notice to others of his intention to dissolve the partnership.

A person may become a member pursuant to agreement with existing members and may cease to be a member in accordance with the members' agreement or, in the absence of which, by giving three months' notice in writing.

Assignment

Subject to the articles of incorporation, interests in shares are generally transferable. If the interest of a shareholder passes to another on death or bankruptcy, the other stands in the former's shoes.

of a partnership share does not entitle the assignee to interfere with the management of the partnership. Death or bankruptcy will generally operate so as to dissolve the partnership, subject to any agreement between partners to the contrary.

Unless the members' agreement provides otherwise or all members agree otherwise, the recipient of an assignment of a member's interest or on a member's death may not interfere with the management of the LLP.

Registration & public records

Incorporation requires registration at the Guernsey Registry.

Registration not required.

Incorporation requires registration at the Guernsey Registry.

Memorandum and articles of incorporation are public documents.

There is no requirement for a written partnership agreement or for it to be publicly filed.

There is no requirement for the members' agreement to be publicly filed.

Annual validation must be filed with Guernsey

Annual

Registry in relation to limited information. Details of members, subject to certain exceptions, may be obtained direct from the Company upon payment of a prescribed fee.

No such requirement

validation must be filed with the Guernsey Registry. Details of members may be obtained direct from the LLP upon payment of a prescribed fee.

Third parties

Liability of members for company debts limited to amount paid up or agreed to be paid up on shares.

Every partner is liable jointly and severally with the other partners for all the debts of the partnership incurred whilst he is a partner.

Members are not liable for any debts of the LLP or any other member by virtue solely of his membership of the LLP.

Members do not have power to bind

Every partner is an agent of the partnership and his fellow partners and so each partner has power to bind the partnership

Each member is an agent of the LLP and so has power to bind the LLP, unless the person with

the company.	and his partners unless the person with whom he is dealing knows he does not have that power.	whom he is dealing knows he does not have that power.
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Management	Members and directors have different functions, rights and liabilities; a person can be one or the other or both.	No distinction.	No distinction.
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If you require any further information about the LLP Law or the incorporation of LLPs in Guernsey, please contact your usual Ogier contact.

About Ogier

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