



GUIDANCE NOTE 22

Limited Partnership

Updated September 2024

Different types of Partnership Structures

Under Gibraltar law there are three types of Partnership Structures:

- 1) An Ordinary Partnership
- 2) A Limited Partnership
- 3) A Limited Liability Partnership

Differences between Ordinary Partnerships, Limited Partnerships and Limited Liability Partnerships ("LLP")

The main difference between the three forms of partnership is that in an ordinary partnership the liability of all of the members is unlimited and they are all jointly liable for the debts and obligations of the partnership.

In a limited partnership the internal structure differs somewhat; the management of the limited partnership is carried out by a general partner, whose liability remains unlimited, as in an ordinary partnership. However the other partners are not personally liable and their liability is limited to the amount they have contributed into the partnership.

LLPs are distinct from both these forms of partnership in that limited liability is granted to all of the members, all of whom may contribute to the management of the partnership. As a result, LLPs are more suited for businesses where all investors wish to take an active role in management.

It should be noted that under Gibraltar law an LLP enjoys legal personality separate from that of its members, but an ordinary partnership does not. A limited partnership may, but need not, have separate legal personality, as per section 10(1) of the Limited Partnership Act 2021. Furthermore, even though a Gibraltar limited partnership may be converted to a limited company and vice versa, there are no specific provisions for converting an LLP to a company (or a company to an LLP) in the Companies Act 2014.

In this guidance note we will only be dealing with limited partnerships. For more information on limited liability partnerships please refer to Guidance Note 30.

Introduction to the Limited Partnership

The limited partnership is popular with practitioners for the following reasons:

1. It offers limited liability to certain of the partners.
2. It is a registered entity that is able to obtain a certificate of registration and a registration number from the Registrar of Companies in Gibraltar.
3. A limited partnership registered in Gibraltar is not automatically subject to Gibraltar tax. If the management and control of the partnership is situated overseas, the partnership is deemed to be Gibraltar non-resident for tax purposes, although this needs to be carefully checked with the tax authorities.
4. It has fewer compliance and disclosure requirements than a company, although this advantage is only fully realised when at least one of the general partners of the limited partnership is an individual.
5. Gibraltar Law allows for a limited partnership to have separate legal personality.

Application of the General Law of Partnership

The Limited Partnership Act 2021 presupposes the existence of partnership as a legal vehicle, and merely modified the application of the rules of partnership law so as to create a new specialist business form. Consequently, limited partnerships remain governed by both the Partnership Act of 1895 and the general rules of law and equity except in so far as the 2021 Act necessarily provides otherwise. It is usual, therefore, for a limited partnership to be constituted by a formal partnership agreement in a manner similar to an ordinary partnership. Gibraltar law permits a company to change its status to a Limited Partnership.

Definition and Constitution

A limited partnership must consist of (a) one or more general persons or "general partners" who are liable for all debts and obligations of the firm; and (b) one or more persons called "limited partners". The limited partners must at the time of entering such a partnership contribute *either* a sum or sums as capital or property valued at a stated amount. The limited partner's liability to creditors is limited to the capital that he has invested. It also follows logically that since limited liability is the quid pro quo for the provision of capital, the limited liability of the partner should not be reduced by subsequent withdrawal of the amount of capital that he has provided.

Legal personality of limited partnerships

A limited partnership may, but need not, have separate legal personality. The general partners of a limited partnership must choose if the limited partnership is to have, or is not to have, legal personality and a declaration to this effect must be delivered to the Registrar when registering the limited partnership or re-registering a company as a limited partnership. It is important to note that the election by the general partners of a limited partnership as to whether the limited partnership has, or does not have, legal personality is final and irrevocable.

Duration

In general terms, the rules governing the duration of ordinary partnerships also apply to limited partnerships. However, the limited partners have no power to dissolve the partnership by notice, with the result that if the partnership is not for a fixed term it may be dissolved at any time by notice given by one or other of the general partners, but not by notice from the limited partners.

Registration

The limited partnership needs to be registered under the Limited Partnerships Act.

Name

There are specific statutory requirements as to the names of limited partnerships. These are set out in the schedule to the 2021 Act. Amongst the requirements, the name of a limited partnership must end with the expression "limited partnership", or the abbreviation "lp" or "LP".

The name of a limited partnership must not be the same as a name appearing in the index of names kept by the Registrar under section 27(8) of the Companies Act 2014, nor can it be a name which may be considered offensive, in the opinion of the Registrar. Also, a limited partnership will not be registered by a name the use of which by the partnership would constitute a criminal offense in the opinion of the Registrar.

In addition, the name of a limited partnership must not give the impression that it is connected with the Government of Gibraltar, unless the Minister responsible for finance has consented to the name being used, nor should it include any word or expression that is deemed to be sensitive (as per section 27(5) of the Companies Act 2014).

It should be noted that the name of the limited partnership may need to be registered under section 3(a) of the Business Names Registration Act.

Limited Partners and Third Persons

The position of the limited partner in principle is that he is a partner by reason of his provision of capital, and this is his sole function. Consequently, a limited partner must not take part in the management of the partnership business and has no power to bind the firm, although by himself or his agents he may inspect at any time the books of the firm and examine the state and prospects of the partnership business, and may advise the partners thereon. If, in breach of this restriction, a limited partner takes part in the

management of a partnership business, he is liable for all debts and obligations of the firm incurred while he is taking part in the management as though he were a general partner.

The loss of limited liability by the limited partner who participates in the management of the firm is temporary. It subsists only so long as he continues to act in the management of the firm and extends to all debts and obligations of the firm incurred during this period.

Loss of Limited Liability

It is, perhaps, helpful at this point to draw together and list the three circumstances in which a limited partner will lose his limited liability, in whole or part. They are: -

- (1) if the firm is not properly registered;
- (2) if the limited partner participates in the management of the business; and
- (3) to the extent that he received back the whole or any part of his capital contribution.

The relations of the Partners amongst themselves

Subject to any agreement expressed or implied between the partners: -

- (a) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;
- (b) a limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;
- (c) the other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;
- (d) a person may be introduced as a partner without the consent of the existing limited partners;
- (e) a limited partner shall not be entitled to dissolve the partnership by notice.

Participation in the Business

As has been noted, a limited partner is excluded from participating in the management of the partnership business and has no power to bind the firm.

Introduction of New Partners

With regards to ordinary partnerships it will be remembered that no new partner can be introduced without the consent of all existing partners. In the case of limited partnerships there are two modifications to this basic rule. First, subject to any agreement express or implied between the partners, a limited

partner may, with the consent of the *general* partners, assign his share in the partnership, and upon such an assignment the assignee becomes a limited partner with all the rights of the assignor. Secondly, and again subject to any agreement express or implied between the partners, a person may be introduced as a partner *without* the consent of the existing limited partners.

Death of a Partner

A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner. However the death of a general partner does mean the dissolution of the partnership unless the partners have agreed otherwise beforehand.

Dissolution of a Limited Partnership

As mentioned earlier, limited partnerships remain governed by both the Partnership Act of 1895 and the general rules of law and equity applicable to partnerships except in so far as the 2021 Act necessarily provides otherwise.

Therefore, given that a limited partnership must have one general partner, it follows that the death, bankruptcy or dissolution of the sole general partner must dissolve the partnership unless a new general partner is immediately admitted to the firm, thereby allowing it to continue.

Generally, however, Part V of the Partnership Act 1895 deals with the dissolution of partnerships and its consequences and these will apply to limited partnerships as far as the Limited Partnerships Act 2021 does not modify them. Therefore, limited partnerships may be dissolved voluntarily (i) if entered into for a fixed term, upon the expiry of that term, (ii) if entered into for a single venture or undertaking, by the termination of that venture or undertaking, or (iii) if entered into for an undefined time, by the *general* partner giving notice to the limited partners of his intention to dissolve the partnership.

Given that pursuant to the Limited Partnerships Act a limited partner is not entitled to dissolve the partnership by way of notice, such notice must be given by the general partner and only he will be responsible for winding up the affairs of the partnership in those circumstances.

If a limited partnership is to be dissolved voluntarily the general partner is required to file Form LP2 with the Registrar of Limited Partnerships notifying him of the same.

A limited partnership may also be wound up by the court:

- On application by the general partner in certain circumstances; or
- As unregistered companies pursuant to the provisions contained in the Insolvent Partnership Regulations 2014 (which are to be read in conjunction with the Insolvency Act 2011).

Bankruptcy of the General Partners

The contribution of the limited partners does not mean that they become liable for the individual responsibilities of the insolvent general partner. This was decided in the case of *Re. Barnard, Martins Bank v Trustee* 1932 1 Ch 269.

Accounting Requirements

A limited partnership will need to file annual accounts with the Companies Registry if it is a “qualifying partnership” under the Partnerships and Unlimited Companies (Accounts) Regulations 2015. A qualifying partnership is, in the case of a limited partnership, one where each of the general partners is a limited company or one where each of the general partners are unlimited companies where each of the members therein is a limited company.

Therefore, if the General Partner’s (or General Partners’) liability is limited (whether directly or indirectly) because it is a limited company then the partnership must file accounts as would be required under Part VII of the Companies Act 2014 if the qualifying partnership were a company to which that Part applied

Payment Method

Please refer to Guidance Note 36 for payment methods accepted by Companies House Gibraltar.

Guidance only

These notes are intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, we recommend that you seek professional advice.

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