

## LIMITED PARTNERSHIPS: UNLIMITED POSSIBILITIES

Limited partnerships ("LPs") are a well established vehicle in Guernsey and are widely used to operate investment funds. They are advantageous in respect of tax planning, allow investor liability to be limited and new partners may be introduced as passive investors. In keeping with Guernsey's reputation as innovative and progressive, our LP law is going one step further. The proposed changes to the Law encompass a number of significant additions.

### Proposed Amendments

#### Protection for Limited Partners

Currently limited partners may lose their protection of limited liability if they are involved in any way in the operation or management of the partnership. Investors are therefore totally excluded from management of the fund. This is at odds with current moves in industry generally which seek to encourage greater involvement of investors. To enable limited partners to provide an effective oversight of the partnership it is proposed the new legislation include a carve out protecting limited partners who participate in a committee of limited partners overseeing the investment activities of the LP.

It is hoped this carve out will encourage the use of these committees ensuring the limited partners have a more active role in the partnership thereby improving corporate governance and accountability.

#### "Protected Cell" Limited Partnerships

It is proposed to introduce protected cell LPs using legislation similar to Guernsey's protected cell company legislation. This would allow an LP to create multiple cells into which it can segregate rights, powers, or duties with respect to specified property or obligations of the LP. This would also allow each cell to have a separate business or investment objective.

#### Separate Legal Personality

Currently Guernsey LPs can elect (irrevocably) to be formed with separate legal personality at the time of their registration.

It is now proposed to allow LPs to adopt separate legal personality at any stage during their life, or alternatively to convert back to an ordinary LP. The liability of the limited or general partners would not be affected, with the main advantage being the ability to contract in the name of the partnership. The changes would have no effect on the rights of third parties which would remain protected by law.

## Clarification of the role of General Partners

#### Contributions to the partnership

Previously there was a concern that if a general partner failed to make a contribution to the partnership on admittance, the LP may not be considered to be a partnership under the Partnership Law. The new law will include a provision expressly stating that a general partner's contribution to the LP is not a pre-requisite to its recognition as a LP. The proposed changes will also allow contributions made by general partners to be in a form other than capital.

#### Execution of documents

To provide counterparties with certainty in transactions, it is proposed to define the circumstances in which a general partner may execute a document on behalf of the LP. Under the proposal where a general partner executes a document on behalf of the LP, the counterparty may assume that:

- The general partner has the authority under which it purports to act
- The document has been validly executed by the general partner.

#### General partners of multiple partnerships

To avoid potential uncertainty where an individual acts as a general partner for numerous LPs, it is proposed to include a provision confirming that a general partner is allowed to be a general partner of more than one LP. This proposal will ensure that concerns raised in other jurisdictions, suggesting that all limited partners of one LP might be found to be partners in all LPs of which the general partner is a general partner of, do not trouble Guernsey LPs.

#### Migrations and Conversions

If the proposed changes are implemented Guernsey would be one of the first jurisdictions to enable the migration of LPs.

The process will be similar to company migrations under the Companies Law 2008. The proposals also provide for the conversion of LPs into another entity, and vice versa, replicating the newly introduced provisions for the conversion of companies under the Companies Law.

Other proposals include enabling LPs to merge, consolidate and amalgamate with any other business entity within the Bailiwick, or potentially with entities outside the Bailiwick.

## Consultation

These proposed changes were put before the States of Guernsey in February 2010. If approved by the States, legislation will be prepared and consulted on to include the above proposals.

It may also interest readers to know that work continues on separate legislation to introduce a Limited Liability Partnership entity to Guernsey as previously discussed in [this article](#) on Guernsey LLP.

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