

COLLAS DAY | COMMERCIAL

# Guernsey to introduce Limited Liability Partnerships

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## COMMERCIAL | LIMITED LIABILITY PARTNERSHIPS

A proposal to introduce Limited Liability Partnerships (LLP) into Guernsey law has been approved by the government of Guernsey. Guernsey's LLP regime will bear some similarities to the UK's. Although its use will not be limited in scope, it is expected that Guernsey LLPs will mostly appeal to practitioners in professional firms who currently work within a general partnership. They may also be suitable for other purposes such as joint ventures. As with other structures, if an LLP intends to carry on a regulated activity, it will need to be licensed by the Guernsey Financial Services Commission.

### Rationale

The traditional model of a partnership involves two or more individuals participating in a business venture, each with joint and several liability with the others for the acts and omissions of any partner. The concept of joint and several liability is seen as outdated, un-commercial and draconian in any organisation which is of a size where the partners are not all personally known to each other. In recent years, a number of leading legal and accountancy partnerships have re-formed as LLPs in the UK and elsewhere.

### Limited Liability vs Joint and Several Liability

It is proposed that partners, or members as they are referred to in the proposals, of a Guernsey LLP will have limited liability for the acts and omissions of other members. A creditor of the LLP has the right to pursue the assets of the LLP but such right does not extend to the personal assets of each and every member.

However, individual members who are liable for the act or omission giving rise to the claim or debt could be personally liable and may be pursued by the creditor if the assets of the LLP are insufficient to satisfy any debt due to that creditor. The personal assets of non-defaulting members of an LLP will be protected.

### Formation of LLPs and Filing Requirements

As with companies, it is proposed that only Guernsey licensed corporate service providers will be able to form LLPs, using the online service currently offered by the Company Registry.

To ensure that the administrative costs of an LLP are kept to a minimum it is likely that ongoing requirements relating to the filing of information on the LLP will be limited to certain matters only.

LLP agreements and certain changes to the partnership must be filed at the Registry. Annual validations must be submitted to the Registry.

LLPs will not be required to have audited accounts although they will need to prepare their accounts in accordance with generally accepted accounting principles.

An LLP may adopt separate legal personality.

A change in the membership or death or retirement of a member will not dissolve the LLP.

There is likely to be a provision in the new LLP law (Law) for disqualifying individuals from being members of an LLP, on similar grounds to directors' disqualification.

In practice there are unlikely to be major differences in the operation of an LLP in the case of a professional partnership subject in any event to its own professional standards.

### The Partnership Agreement

The Law will set out the requirements for an LLP agreement between the members of the LLP, including a number of minimum provisions concerning the internal management of the LLP. A standard partnership agreement may be prescribed by the authorities in due course. It is also proposed that an LLP should be able to indemnify its members out of its assets and that such an indemnity may be included in the LLP agreement. LLPs may also be permitted to purchase insurance for its members.

## Conversions into LLPs

Existing Guernsey law partnerships will be able to convert to LLPs, on an application accompanied by, where applicable, evidence that the appropriate professional body has consented to members of that profession practising through an LLP. There are also notice provisions to comply with.

A converted LLP will not provide retrospective limited liability, hence partners will remain jointly and severally liable up until the point of conversion.

There may be provision in the Law allowing a company to convert to an LLP (and vice versa), provided that creditors' rights are not prejudiced.

## Limited Partnerships

It should be emphasised that a Guernsey LLP will be distinct from a Guernsey Limited Partnership (LP). In an LP, 'general' partners are responsible for the day to day management of the partnership and remain jointly and severally liable for its liabilities, whereas 'limited' partners, who do not take part in the running of the business, enjoy limited liability up to the amount of their investment. This feature of an LP makes it a popular structure for an investment vehicle.

An LLP is not intended to replace the use of LPs but will provide a new framework for commercial and professional ventures in Guernsey.

## Next Stage

Draft legislation is in the process of being prepared.

Collas Day's Commercial Team are available to assist you and your business if you are interested in forming or converting your partnership or company into an LLP.

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