

GUIDE TO LIMITED LIABILITY PARTNERSHIPS IN GUERNSEY

CONTENTS

PREFACE	1
1. Introduction	2
2. Key Features of the Guernsey LLP	2
3. Uses of Guernsey LLPs	4
4. Conclusion	4

PREFACE

This Guide is a summary of the law and procedures relating to the establishment and operation of Limited Liability Partnerships in Guernsey.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Corporate team, using the [contact information](#) provided at the end of this Guide.

Appleby

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1. INTRODUCTION

Guernsey introduced its form of limited liability partnership (**LLP**) with effect from 13 May 2014 in response to increasing demand for this type of structure in Guernsey, with all the benefits and advantages that Guernsey offers generally as a jurisdiction in which to do business. Whilst LLPs have been introduced in several other jurisdictions, including the UK (from 2000) and a number of offshore jurisdictions, in drafting the Limited Liability Partnerships (Guernsey) Law, 2013 (the **Law**) Guernsey has had the advantage of being able to learn from those other regimes to develop an alternative business structure that will be attractive to a wide variety of users, both domestic and international.

The principal concept of an LLP is that it combines the most advantageous features from a general partnership and a company. This gives the flexibility of operation of a partnership with reduced regulation compared to a company, combined with the benefit of its being a body corporate that can contract in its own right (rather than as a collective of partners), with limited liability for its members (in contrast to the unlimited liability of partners in a general partnership).

In contrast to a limited partnership, the members of the LLP may participate in the day to day management of the business without losing limited liability status. This advantage, combined with the flexibility of operation of a general partnership, will be attractive to a variety of businesses. In the UK, the LLP has in particular proved attractive to international accounting firms, law firms and many investment funds.

Guernsey's LLP legislation has been based on the UK's Limited Liability Partnerships Act, 2000, with a number of key differences designed to deal with perceived issues with that regime.

2. KEY FEATURES OF THE GUERNSEY LLP

The key features of the Guernsey LLP are:

2.1 Any Lawful Activity

It may be formed for the carrying on within Guernsey or elsewhere of any lawful business with a view to profit, or any other lawful activity. The latter limb was added to clarify that the Guernsey LLP can be used for an activity which is not necessarily trade or business (for example, acting as a holding entity), whereas there is uncertainty in UK law on this point.

2.2 Membership

It shall have two or more members who are admitted to the LLP in accordance with the members' agreement.

A member may be a natural person or a body corporate.

2.3 Body Corporate

It is a body corporate (unlike, for example, the Jersey LLP) and has legal personality separate from that of its members; it therefore has continuous existence regardless of a change in its members, unless provided otherwise in the members' agreement.

2.4 Limited Liability of Members

A member is not liable for any debt of the LLP, or of any other member, by virtue solely of his membership of the LLP (subject to any provision to the contrary in the members' agreement or any other agreement). Consequently, a member's liability will be limited to whatever the member has agreed with the other members or with the LLP to contribute (subject to the provisions of the Law regarding liability for fraudulent and wrongful trading).

2.5 **No Capital Contribution or Financial Resources Requirements**

There is no initial capital contribution requirement in order to become a member of the LLP and (unless provided in the members' agreement) no obligation to contribute capital to the LLP at all.

There are no bond or minimum professional indemnity insurance requirements (unless imposed by the LLP's professional or regulatory body or specific regulatory laws to which it may be subject).

2.6 **Capacity of LLP and Power of Members to bind it**

It has unlimited capacity and every member of an LLP is its agent with power to bind it.

2.7 **Written Members' Agreement**

It must have a written members' agreement (unlike in the UK), but the members' agreement is not publicly filed and is confidential to its members. The members' agreement is an agreement of the members as to the affairs of the LLP and the conduct of its business, but there is complete flexibility as to its content, save that unless the members' agreement otherwise provides:

- all the members of an LLP are entitled to share equally in the profits of the LLP as and when those profits arise;
- every member may take part in the conduct and management of the LLP; and
- each member must render true accounts and full information of all things affecting the LLP to any member or his legal representative.

It is believed that the first two points above are key criteria to ensure that the Guernsey LLP will be considered to be tax transparent for the purposes of Guernsey law and elsewhere.

There is no concept of designated members with particular compliance functions (unlike in the UK and Jersey). The members are free to agree how the LLP will be managed, for example a secretary may be appointed to the LLP to conduct filings with the Registry and provide other administration services.

2.8 **Tax Transparency**

Guernsey's Income Tax legislation has been amended to ensure that domestically a Guernsey LLP will be treated as tax transparent in the same way as general partnerships, i.e. the LLP is not liable for tax, rather the members themselves are liable to be taxed on their share of the LLP profits.

2.9 **Unfair Prejudice and Derivative Actions**

The Law provides legal certainty that members may bring the company law claims for unfair prejudice and derivative action with respect to Guernsey LLPs, and that they may exclude these rights by unanimous written agreement.

2.10 **Incorporation Process**

Formation of an LLP is straightforward and is conducted through the Guernsey Companies Registry; same day incorporation is available.

2.11 **Accounts**

On-going reporting requirements are relatively low. The LLP's accounts are not publicly filed and there is no requirement under the Law for the accounts to be audited. The LLP is free to choose the applicable accounting standards and is not tied to UK GAAP or IFRS.

2.12 Conversion and Migration Procedures

The Law provides procedures for general partnerships to convert to LLP status and for migration of LLPs (together with their assets and liabilities) into and out of Guernsey, from/to other jurisdictions, as continuing legal entities.

3. USES OF GUERNSEY LLPS

In the short time since the Law has been in force, Guernsey LLPs have been registered for a variety of purposes, including:

- owning the corporate general partner of a Guernsey registered limited partnership;
- providing marketing services for the members of the LLP;
- to hold a plane;
- governance planning;
- to act as the general partner of one or more limited partnerships; and
- as an alternative to a traditional trust structure for holding real estate.

So it can be seen that the Guernsey LLP is being used both as a vehicle for providing services and as an asset holding vehicle.

Its most common use to date has been to act as general partner of one or more limited partnerships, whether Guernsey or non-Guernsey limited partnerships. In particular it has been used to act as general partner of an English/Scottish limited partnership, which means that the limited partnership is not subject to the revised requirements of the UK Partnerships (Accounts) Regulations 2008 relating to prescribed accounting standards and public filing of accounts.

Its use to house investment management firms is something we are likely to see much more of given Guernsey's thriving funds industry and in the wake of the EU Alternative Investment Fund Managers Directive (**AIFMD**), due to which many EU based fund managers are looking to relocate their operations outside of the EU; the ability to migrate existing LLPs into Guernsey will be attractive in this regard.

As every member may take part in the conduct and management of the LLP, the LLP is suitable to any business where there is joint management, or as a joint venture vehicle. Whereas before the arrival of the Guernsey LLP a limited partnership or company structure would have been used for an investment fund or club deal, in certain circumstances (most probably for real estate investments) the Guernsey LLP will now be more attractive to enable the investors to participate in the management whilst preserving their limited liability status.

Given that a Guernsey LLP can be incorporated for any lawful activity, without the requirement that it be "with a view to profit", it would also serve well as a vehicle for charities.

And of course the Guernsey LLP will be of interest to businesses traditionally carried out as partnerships, such as professional services firms, or employee-owned businesses, where the limited liability offered by the LLP (and not being liable for the acts or omissions of one's fellow members) will be an obvious attraction.

4. CONCLUSION

In conclusion, the Guernsey LLP is a valuable new addition to Guernsey's armoury of business vehicles. Its limited liability, flexibility of operation and tax transparency are likely to lead to its use for a variety of purposes in both domestic and international contexts.

For more specific advice on limited liability partnerships in Guernsey, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).

The term "Partner" is a title referring to a member, employee or consultant of equivalent standing and qualifications of Appleby (Guernsey) LLP which is an Appleby legal practice and a limited liability partnership. A list of the partners of any Appleby partnership, members of any Appleby limited liability partnership, or of the members, shareholders and directors of any Appleby limited company and of any other non-shareholders who are termed "Partners" of any legal practice is available for inspection upon request from your relationship partner. Appleby is an organisation of separate entities and legal practices comprising both corporate and partnership form, each established to provide legal services under the Appleby name from the numerous jurisdictions in which it is based.

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