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ADVOCATES

Limited Liability Partnerships

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Limited Liability Partnerships

In April 2009, the States of Guernsey resolved to introduce the concept of Limited Liability Partnerships (“LLPs”) in Guernsey. The relevant legislation is currently being drafted and is expected to be implemented in late 2010.

This brief guide introduces some of the salient features of the LLP.

The Traditional Partnership Model

Traditionally, a partnership has constituted two or more individuals carrying on a business with a view to profit. Each partner has unlimited joint and several liability with every other partner for the acts or omissions of any individual partner. In modern partnerships where there can be dozens of partners, many of whom will never have met, the concept of unlimited personal joint and several liability is regarded as un-commercial and punitive (albeit that the risk is managed through the maintenance of professional indemnity insurance). Many jurisdictions have recognised this over recent years and the limited liability partnership was born. LLPs were introduced in the United Kingdom by Act of Parliament in 2000, and have been introduced in Jersey.

Limited Partnerships

The current proposals are not to be confused with the already existing Limited Partnerships (“LPs”) which have been available in Guernsey since 1995. In that structure, the partners involved in the daily management of the business remain jointly and severally liable for the LP’s liabilities. Only the limited partners, who are generally investors taking no part in the running of the business, enjoy limited liability to the level of their investment. The LP structure is typically used by investment funds. The manager of the fund has unlimited liability in respect of investment decisions, whereas the investor(s) enjoy limited liability in relation to these decisions. LPs will continue to operate alongside LLPs.

The New Model: Key Features

The proposals that the States of Guernsey have approved will mean that partners (or members as they are currently referred to in the proposals) of an LLP will have certain protections not available in the traditional partnership model, including:

- A partner/member has limited liability for the acts or omissions of other partners/members to which they were not party or privy.
- Creditors can pursue the assets of the LLP but there is no right to the personal assets of a partner/member not associated with the act or omission.
- However, the partner/member who is responsible for the act or omission leading to debt or claim can be pursued by the creditor if the LLP has insufficient assets to meet the debt.
- Unless the members state otherwise, the LLP will exist in perpetuity notwithstanding a change of members.

The New Model: Structure

There are unlikely to be any major differences in the day-to-day running of an LLP from that of a traditional partnership as currently constituted. However, the following is worth noting:

- Only Guernsey licensed corporate service providers will be able to form LLPs.
 - The LLP may adopt separate legal personality.
 - The Law will set out requirements for an LLP agreement between the members of the LLP.
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- Formation will be through the on-line service offered by the Company Registry.
- Conversion to an LLP will require notice once the relevant application is made.
- The LLP agreements must be filed at the Registry, and notification of any changes to the agreement or the members of the LLP must be given to the Registrar.
- Annual validations must be submitted to the Registry.
- Changes in the personnel of the partnership (through death, retirement, disagreement, etc) will not result in the automatic dissolution of the LLP.
- There is no requirement for audited accounts. LLPs will be required to prepare accounts in accordance with generally accepted accounting practice.
- If the LLP carries out a regulated activity there is a requirement to be licensed by the Guernsey Financial Services Commission.
- The LLP will be able to indemnify its members out of its assets and include such indemnity in the LLP agreement.
- It is proposed that LLPs may be permitted to purchase insurance for its members.
- A person may be disqualified from being a member of an LLP, in a similar manner to disqualification from acting as a director.

The New Model: The Future

It is envisaged that Guernsey LLPs will appeal to practitioners in professional firms who are currently working in a general partnership, although the scope of the LLP will not be limited by law to that field. The Law may make provisions for companies to convert into LLPs and vice versa. The introduction of a new form of business structure to Guernsey is to be welcomed.

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This note does not constitute legal advice, and should not be relied upon as so doing. Specific legal advice must be sought in any particular case.