



A GUIDE TO LIMITED PARTNERSHIPS

IN NEW ZEALAND

This guide is a summary of the law and procedures relating to limited partnerships in New Zealand. It is intended to provide general assistance to those considering establishing such a limited partnership and is not intended to be comprehensive in its scope.

This guide reflects New Zealand law and practice as at August 2018. If you require comprehensive advice then please contact one of our experts using the contact details at the end of this guide.

INTRODUCTION

The Limited Partnerships Act 2008 (**Act**) governs the establishment and operation of limited partnerships in New Zealand.

The primary objective of the limited partnerships regime is to facilitate sustainable growth in New Zealand's venture capital and private equity industries. Limited partnerships may be used for a number of different purposes and, while they remain a much loved vehicle for venture capital and private equity funds around the world, they have also been used in New Zealand as vehicles for forestry and real estate investments.

The attraction of limited partnerships for investors and investment managers lies in the tax treatment and flexibility of limited partnerships when compared to other corporate structures such as companies and trusts.

TAX TREATMENT

One of the key features of a limited partnership is its tax treatment. A limited partnership is transparent for New Zealand tax purposes and the limited partnership itself is not taxed.

Instead, the limited partners themselves are treated as carrying on the taxable activity and are taxed according to their own tax attributes and in relation to their proportionate share of the limited partnership's income.

Subject to some limits, if a limited partnership incurs tax losses then those losses will also flow through to the limited partners and can be off-set against their income.

REGULATION

Limited partnerships which are managed investment schemes and which offer limited partner interests to retail investors will be subject to the regulatory and disclosure regimes contained in the Financial Markets Conduct Act 2013 (**FMCA**).

Please contact us for specialist advice on these regimes and their requirements.

FORMATION AND REGISTRATION

A limited partnership is formed only on its registration under the Act and it continues to exist until it is deregistered. The formation process is relatively straightforward.

To be registered, a limited partnership must have:

- At least 1 general partner and at least 1 limited partner.
- A written partnership agreement as to the affairs of the limited partnership and the conduct of its business.
- A name that includes the words 'limited partnership' or the abbreviation 'LP' or 'L.P.' at the end.
- A registered office in New Zealand.

The registration application is made to the New Zealand Companies Office using a prescribed form and must be accompanied by a prescribed form of general partner consent and an application fee (currently, NZ\$270).

Details of the proposed limited partners must be given to the Registrar with the application but these details are not made publicly available. The limited partnership agreement is not provided to the Registrar and is also not available to the public.

THE LIMITED PARTNERSHIP AGREEMENT

Every limited partnership must have a written agreement as to its affairs and the conduct of its business. On registration the limited partnership agreement has effect as a contract between the limited partnership and each partner and between the partners themselves. The limited partnership agreement must provide for at least the following:

- Any restrictions on the ability of a partner to assign their interest;
- Any restrictions on the business or other activities of the limited partnership;
- The entitlement of partners to distributions;
- The ability of the general partner to compete with the limited partnership;
- When partner meetings must be held;
- How partners can leave or be expelled from the limited partnership and how new partners are admitted;
- When and how the limited partnership terminates; and
- Whether the partnership has a conflict of interest policy and the nature of that policy.

The Act provides that various powers may only be exercised if permitted by the limited partnership agreement and that various other provisions of the Act are subject to the terms of the limited partnership agreement.

THE GENERAL PARTNER

The general partner is responsible for the management of the limited partnership and may, but need not, make a capital contribution to the limited partnership.

The general partner is an agent of the limited partnership for the purposes of the limited partnership's business. The general partner has various fiduciary obligations to the limited partnership under the Act (such as a duties to account for profits and to render true accounts) but these can be varied or excluded under the limited partnership agreement.

Each general partner is jointly and severally liable with the limited partnership and any other general partners for the limited partnership's unpaid debts and liabilities that are incurred while that person is a general partner. Unless the limited partnership agreement provides otherwise, the general partner will only be liable to the extent that the limited partnership can't pay those debts and liabilities itself.

For all limited partnerships, the general partner must be one of the following:

- A natural person who lives in New Zealand or who lives in Australia and is a director of an Australian company.
- A limited partnership that has one or more general partners who are natural persons who live in New Zealand or who live in Australia and are directors of an Australian company.
- A general partnership that has one or more partners who are natural persons who live in New Zealand or who live in Australia and are directors of an Australian company;
- A New Zealand registered company;
- An overseas company registered in New Zealand and that has one or more directors who live in New Zealand or who live in Australia and are directors of an Australian company.

You should note that, unlike some other jurisdictions, in order for a limited partnership to act as the general partner of another limited partnership, it must have at least one general partner that is a natural person.

THE LIMITED PARTNERS

A limited partner's liability is usually limited to the amount that they have agreed to contribute to the capital of the limited partnership.

A limited partner must not take part in the management of the limited partnership. If a limited partner does so then the limited partner may be liable to the same extent as a general partner for debts and liabilities incurred while they were taking part in the management.

The Act sets out 17 safe harbour activities that do not constitute taking part in the management of the limited partnership. These include:

- Approving or vetoing investments as a member of an advisory committee or if the value of which would be more than 50% of the value of the assets before the investment.
- Approving (including as a member of an advisory committee) a change in the senior employees of the general partner or the manner of the general partner's operation.
- Taking part in a decision to vary or replace the partnership agreement.
- Acting as a director, employee, consultant, contractor or a shareholder of a general partner that is a body corporate.
- Taking part in a decision to determine an actual or potential conflict of interest.
- Consulting or advising (including as an advisory committee member) the general partner about the activities of the limited partnership or its accounts.
- Acting as a director, employee or contractor to any person in which the limited partnership has an interest.

ADMISSION OF NEW PARTNERS AND TRANSFERS OF INTERESTS

The limited partnership agreement must set out any restrictions on a partner's ability to assign or dispose of their partnership interest. It also needs to provide for how a partner can leave or be expelled from the limited partnership and how a new partner may be admitted to the limited partnership.

Generally, the limited partnership will either permit or prohibit transfers or the admission of new limited partners. If they are permitted then the new limited partner will usually be required to agree to the terms of the limited partnership agreement under a deed of adherence.

DISTRIBUTIONS

All distributions by a limited partnership must be authorised in writing by the general partner. The limited partnership agreement will usually specify the rights of the partners to share in the profits of the limited partnership and to receive distributions.

A general partner can only authorise a distribution if satisfied on reasonable grounds that the limited partnership will be solvent immediately after the distribution is made. A limited partnership will be solvent for distribution purposes if it can pay its debts as they become due in the normal course of business and the value of its assets is greater than its liabilities, including contingent liabilities.

If a limited partnership is insolvent when it makes a distribution then the partner receiving the distribution must repay it if the partner knew that the partnership was insolvent. The ability to claw-back insolvent distributions will cease after the longer of three years after the distribution is made or the period specified in the limited partnership agreement.

The general partner is liable to repay any distributions that cannot be recovered from the partner to whom the distribution is made.

RECORDS

A limited partnership is required to keep various records at its registered office, including:

- the limited partnership agreement and amendments;
- minutes of all meetings and resolutions within the last seven years;
- the name and address of all current partners and of each person who has ceased to be a partner in the last seven years;
- the capital accounts of current and former partners for the last seven accounting periods;
- accounting records that explain the limited partnership's transactions and allow the financial position to be determined; and
- financial statements for the last seven accounting periods.

Subject to the partnership agreement, a partner has the right to inspect these records during ordinary business hours.

FINANCIAL STATEMENTS AND AUDIT

The general partner of a 'large' limited partnership, or of a limited partnership that has opted into doing so, must ensure that financial statements (within the meaning of the Financial Reporting Act 2013) that comply with generally accepted accounting practice are completed within five months after the limited partnership's balance date and signed by the general partner.

A limited partnership is 'large' in respect of an accounting period if, at its balance date for each of the two preceding accounting periods, its total assets (including subsidiaries) exceed NZ\$60 million or, in each of the two preceding accounting periods, its total revenue (including subsidiaries) exceeds NZ\$30 million.

A limited partnership must opt into compliance with the requirement to prepare financial statements if required to do so by partner(s) who have contributed at least 5% of the capital contributions of all the partners.

If financial statements are required under the Act then they must also be audited by a qualified auditor. A large partnership can opt out of the audit requirement if, within six months from the start of an accounting period, a resolution to that effect is passed by partners who have together contributed at least 95% of the capital contributions of all the partners.

Audited financial statements must be sent to each partner within 5 months after the limited partnership's balance date.

ANNUAL RETURNS AND OTHER REGISTRAR NOTIFICATIONS

On registration, each limited partnership is allocated a month for the purposes of filing an annual return. The general partner must ensure that an annual return is made to the Registrar in the prescribed form during the allocated month.

In addition to details such as the names and addresses of the limited partnership, the general partner and the limited partners, the annual return also needs to include a statement as to whether or not the limited partnership has been an offeror under an FMCA regulated offer, an offeror of financial products for which a limited disclosure document was required under FMCA, or has knowingly relied on various disclosure exclusions under FMCA (including, offers to certain types of wholesale investor, offers to certain types of close business associate, and offers under employee share schemes).

Any changes to the registered details of a limited partnership must be notified to the Registrar within 10 working days.

Information provided on limited partners in an annual return or an event based notification will not be made publicly available.

TERMINATION

The limited partnership agreement will usually contain provisions that set out the events that will lead to the termination of the limited partnership. The Act also provides for a limited partnership to terminate on:

- Subject to the limited partnership agreement, the passing of a resolution to terminate by partners having contributed at least 75% of the capital contributions.
- There having been no general partner for 10 working days or more.
- There having been no limited partner for 10 working days or more.
- The limited partnership agreement having lapsed for 10 working days or more.

After one of these events has occurred, the general partner's authority to bind the limited partnership continues but only so far as necessary to wind up the limited partnership's affairs and to complete any transactions unfinished at the time of the event.

If a terminating event has occurred, the limited partnership may appoint a liquidator by resolution passed by partners having contributed at least 75% of the capital contributions. The Court also has power to appoint a liquidator.

CONCLUSION

For investment managers, limited partnerships are flexible business vehicles that do not suffer from the prescriptive requirements associated with other structures. For investors, limited partnerships offer tax transparency and limited liability protection.

As discussed in the introduction, the primary objective of the limited partnerships regime is to facilitate sustainable growth in New Zealand's venture capital and private equity industries. The features of New Zealand's limited partnership regime will be instantly recognised by foreign investors and they should take comfort that New Zealand's regime works in a broadly similar fashion to other jurisdictions.

For more information on New Zealand limited partnerships and their uses, please contact:



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