



LIMITED PARTNERSHIPS

LIMITED PARTNERSHIPS IN NEW ZEALAND

New Zealand's relatively new limited partnership regime aims to provide a convenient, flexible and internationally recognised structure encompassing some of the best features of both companies and partnerships. Therefore, it may offer a viable alternative to those traditional structures for a wide range of businesses. We outline some of the key features below.

OVERVIEW

A limited partnership is a corporate structure with separate legal personality (similar to a company) which offers limited liability to investor partners. A limited partnership has full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction, both within and outside New Zealand.

A limited partnership has "pass-through" tax treatment in New Zealand, which means the tax consequences of the partnership's activities flow directly to the investor partners. There is no separate layer of corporate tax.

Formation and duration

Limited partnerships are governed by the Limited Partnerships Act 2008 and must be registered with the New Zealand Companies Office. The name of a limited partnership must include the words "limited partnership" or the abbreviation "LP" or "L.P." at the end of the name. There are similar restrictions as for companies.

A limited partnership is formed on registration at the Companies Office and continues until it is deregistered.

Partnership agreements

A limited partnership must have a written partnership agreement containing certain matters specified by law. The agreement can be amended at any time in accordance with procedures specified within it. The partnership agreement is not required to be registered and therefore is able to be kept private as between the partners.

PARTNERS IN LIMITED PARTNERSHIP

Any person (legal or natural) may be a partner of a limited partnership. A partnership under the Partnership Act 1908 or an overseas limited partnership registered under the Act may also be a partner.

A limited partnership must have at least one general partner and one limited partner. While they cannot be the same person, there is no restriction on them being related parties.

A general partner is responsible for the management and business of the partnership.

Limited partners contribute capital to the partnership as investors but must not take part in the management of the business. While all partners' details must be registered, only details of the general partner will be made public thereby keeping the details of the underlying investors confidential.



GENERAL PARTNER REQUIREMENTS

ALL LIMITED PARTNERSHIPS ARE NOW REQUIRED TO HAVE ONE OR MORE OF THE FOLLOWING:

- A general partner who lives in New Zealand; or
- A general partner who lives in and is a director of a company (other than an overseas company) registered in an enforcement country (limited at this stage to the Commonwealth of Australia); or
- A general partner that is a limited partnership and that has at least one general partner who lives in New Zealand, or who lives in and is a director of a company (other than an overseas company) registered in Australia; or
- A general partner that is a partnership governed by the Partnerships Act 1908 and that has at least one general partner who lives in New Zealand, or who lives in and is a director of a company (other than an overseas company) registered in Australia; or
- A general partner that is an NZ company; or
- A general partner that is an overseas company registered under the Companies Act 1993 and that has at least one director who lives in New Zealand, or who lives in and is a director of a company (other than an overseas company) registered in Australia.

LIABILITY OF GENERAL PARTNERS

A general partner is jointly liable with the limited partnership and other general partners for the unpaid debts and liabilities incurred while that person is a general partner. However, as noted above, a limited liability company may be a general partner. Also, a general partner is only liable to the extent that the limited partnership cannot pay those debts or liabilities.

LIABILITY OF LIMITED PARTNERS

A limited partner usually has no liability beyond the capital contributed. However, they can be liable if they take part in the management of the limited partnership and third parties are misled into thinking that they are a general partner. A schedule to the Act sets out "safe harbours" which do not constitute taking part in the management of the business of the limited partnership.

ENTRY AND EXIT FROM THE LIMITED PARTNERSHIP

A partner may transfer or assign their share in the partnership in the manner set out in the partnership agreement. The partnership agreement will generally provide for limited partners to leave the partnership by way of transfer, which may or may not be subject to pre-emptive rights. The partnership agreement may also deal with how partnership interests are valued on transfer. The general partner sometimes has a discretionary role in approving transfers.

The partnership agreement will also generally provide for removal of the general partner. Removal of a general partner may be for "cause" (e.g. for negligence, misconduct, fraud, breach or insolvency) or, in certain circumstances, in accordance with a resolution of limited partners (often an extra-ordinary majority). In either situation, partners must make provision for the fact that a partnership is required to have at least one general partner at all times.

Admission of new limited partners will generally be by way of a deed of subscription and adherence for the allocation of new interests or a deed of adherence (or deed of accession) for transferees of limited partnership interests.

PUBLIC REGISTERS

The Registrar of Companies maintains a register of limited partnerships and overseas limited partnerships containing names, dates of registration, registration numbers, addresses of registered offices and details of general partners (name, date of birth if applicable, and address in each case).



The registers are available for access and searching by members of the public at all times (unless validly suspended). However, as noted above, information about the identity and details of limited partners cannot be searched except by the Registrar who must treat limited partner information as confidential.

FINANCIAL STATEMENTS AND ANNUAL RETURNS

General partners must ensure that financial statements are completed in relation to the limited partnership and approved within five months after the balance date of the limited partnership. However, unless the limited partnership is a public issuer these do not have to be audited registered or made public.

Annual returns for the limited partnership must be filed each year, as for a company.

TAX FEATURES

Tax legislation provides that partnerships are transparent, and all activities and property of the partnership are treated as being carried on and held by the partners (even though a limited partnership has separate legal personality).

The extent to which partnership losses will flow through to partners in a limited partnership is dictated by the actual equity investment of that partner. Deductions denied in one income year can be carried forward and claimed in a subsequent income year.

This is a general description of the tax features of limited partnerships only, and specific tax advice should always be sought in relation to any particular limited partnership structure.

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