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Limited Partnerships are an option for running joint business ventures

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LIMITED PARTNERSHIPS ARE A RELATIVELY new type of ownership structure for businesses or joint ventures in New Zealand, governed by the Limited Partnerships Act 2008 (“the Act”). They are becoming a more and more popular structure for a variety of commercial and farming ventures in New Zealand.

Limited partnerships give one partner (the general partner) the responsibility for the day-to-day running of the business or venture and the liability for the venture, while a limited partner generally contributes financially, but does not have any liability for the venture (other than the initial capital it put in).

Limited partnerships can be a viable option for many investors (including overseas investors) who do not want to be involved in the day-to-day running of a business or venture, but are able to contribute capital. For example:

A company wanted to produce health products from Manuka trees on some farm land. The owner of the farm land was happy to contribute their land to the project, given they would receive voting rights and a share of profits from the venture, but did not want to be involved in the day-to-day running of the venture as they did not have commercial expertise or desire to do so.

A limited partnership would give both parties what they want, as the company could be the general partner and take control and responsibility for the venture, and the land owner could contribute land (or capital) without incurring liability for the success of the venture as the limited partner (other than to the extent of the land or capital it had contributed).

What are Limited Partnerships and how do they operate?

A limited partnership is a legal entity which is registered with the Companies Office in the Limited Partnerships register.

Limited partnerships operate in a similar way to a standard partnership, where generally partners each contribute towards

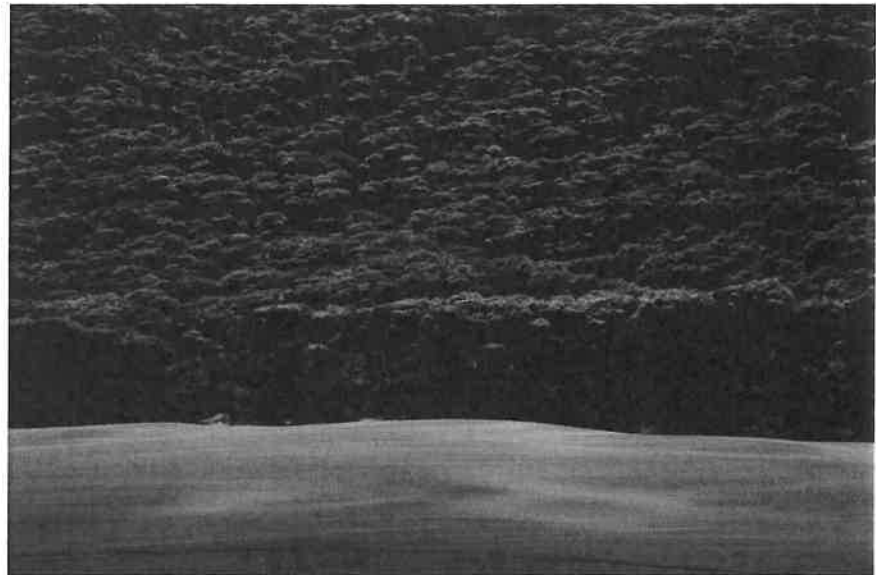


Photo by flickr user russellstreet ☺☺☺

the initial capital of the partnership, and share the profits and losses based on their contribution to the capital. However, unlike standard partnerships, they are registered entities (through the Companies Office, as above) and are a separate legal entity on their own.

They are a well-recognised business structure overseas.

As referred to above, the parties to a limited partnership are:

- a. A ‘general partner’, who generally contributes capital and is responsible for the day-to-day running of the partnership and bears all of the liability for the business or venture; and
- b. A ‘limited partner’ who generally contributes capital but bears no liability for the debts or liabilities of the partnership (other than liability in relation to the initial capital they put in), provided that they do not take part in management or running of the business or venture.

It is worth noting that:

- a. Each partner does not necessarily have to put in capital to the partnership – this will depend on the terms of the partnership agreement; and
- b. The absence of liability for the limited partner is dependent on them not being involved in the management and

running of the business or venture. If they do get involved in the management of the venture, then their liability will no longer be limited. This is also the case where the limited partner has held themselves out to a third party to be the general partner.

There can be more than one of each type of partner, for example, there can be one general partner and two limited partners.

There are also some tax advantages of using a limited partnership, in particular that it is not taxed as a separate entity; the partners are instead taxed personally on any profits. Clients should be encouraged to take tax advice when considering setting up a limited partnership.

Partnership Agreements

The Act requires limited partnerships to have a written partnership agreement in place recording the arrangements with regard to the partnership and the conduct of its business.

The following matters are required to be included in the partnership agreement:

- Any restriction on assigning or disposing of an interest in the partnership;
- Whether there are any restrictions on the business or activities that the partnership may carry out;

- Entitlement of partners to distributions;
- Any restrictions on the general partner competing with the limited partner;
- Leaving or being admitted to the partnership;
- How the limited partnership terminates; and
- The nature of any conflict of interest policy in place.

Any provisions included in a partnership agreement which are contrary to the Act will be invalid, so it is important that clients and their advisors are aware of the provisions of the Act.

The partnership agreement does not need to be registered on the Limited Partnerships register, unlike a company where the constitution is a publically registered document. Parties involved in ventures like this generally appreciate this element of privacy for their business arrangements.

When applying to register a limited partnership, the general partners need to certify that the partnership agreement complies with the Act.

Who can be a partner?

The partners can be individuals or other entities, such as companies or 'normal' partnerships under the Partnerships Act 1908. There are residency requirements as detailed below.

In the case of individuals, at least one of the general partners must be resident in New Zealand or another "enforcement country" (being Australia at this stage). The requirements also include that the individual must be over 18, must not be an undischarged bankrupt, must not be prohibited from being a director of a company or from being a general partner of a limited partnership and must not be subject to a property order under the Protection of Personal and Property Rights Act 1988.

In the case of partnerships, overseas companies or limited partnerships becoming partners of a limited partnership, the relevant entity must have at least one director, partner or officer living in New Zealand or Australia. In the case of any director living in Australia, they must also be director of an Australian company. There are no such restrictions in the Act for New Zealand companies becoming limited partners, but the Companies Act 1993 has its own requirements regarding

residency of directors which would need to be complied with before the company itself could be registered.

The details of the general partner are made publically available via the Limited Partnerships register, but the limited partner's details are not. This adds a further element of privacy for the limited partner.

Naming of a partnership

The Act provides some restrictions around naming of partnerships, similar to a company. These are:

- a. The name of the partnership must include the words "Limited Partnership", "LP" or "L.P." at the end of its name.
- b. The name cannot be identical or almost identical to any other limited partnership, company or overseas limited partnership registered in New Zealand, otherwise the application for registration will be rejected. Unlike the process for registering a company, there is no 'name reservation' process - this is instead reviewed as part of the application to register the limited partnership.
- c. The name must not be offensive or contravene any other legislation.

The partnership must ensure that its name is clearly stated in every written communication sent by the partnership and every document signed by the partnership that creates a legal obligation.

In a similar vein to companies, a person or entity cannot hold itself out to be a limited partnership or use the word "Limited Partnership" in its name if it is not a registered limited partnership.

What are the ongoing reporting responsibilities of a limited partnership?

A limited partnership is required to prepare financial statements every year, which need to be audited in certain circumstances.

It is also required to file an annual return with the Companies Office, similar to a company.

How does a limited partnership terminate?

Termination of a limited partnership will depend on what the partnership agreement provides, however there are some events that cause the partnership to terminate, including:

1. A resolution of the limited partnership to terminate;
2. If there has been no general partner for 10 working days or more (for example if the only remaining general partner resigned or, in the case of a company as a general partner, the company was struck off the Companies register and no replacement general partner was appointed);
3. If there has been no limited partner for 10 working days or more (similar to above, this would include a situation where the only remaining limited partner resigned or, in the case of a company as a limited partner, the company was struck off the Companies register and no replacement limited partner was appointed); or
4. The Partnership Agreement has lapsed for 10 working days or more (for example if there was a provision in the Partnership Agreement providing that it would terminate or lapse upon the occurrence of a certain event, or at a certain date).

It is therefore important that the partnership has arrangements recorded in its Partnership Agreement regarding such matters as appointment of successor partners where a general partner or limited partner leaves the partnership.

Conclusion

Limited partnerships are a viable option for many business ventures. There are many aspects to consider when advising clients as to whether a limited partnership is the right structure for a particular venture, including responsibility and liability for the partnership and eligibility to be a partner, including residency requirements.

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