

GUERNSEY STATUTORY INSTRUMENT

GUERNSEY

2020 No. 69

**The Limited Partnerships (Guernsey)
(Migration) Regulations, 2020**

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The Limited Partnerships (Guernsey) (Migration) Regulations, 2020

<i>Made</i>	30 th July, 2020
<i>Coming into operation</i>	30 th July, 2020
<i>Laid before the States</i>	, 2020

THE COMMITTEE FOR ECONOMIC DEVELOPMENT, in exercise of the powers conferred on it by sections 43 and 44 of the Limited Partnerships (Guernsey) Law, 1995^a, and all other powers enabling it in that behalf, and after consultation with the Guernsey Financial Services Commission, hereby makes the following regulations:-

PART I MIGRATION OF OVERSEAS LIMITED PARTNERSHIPS TO GUERNSEY

Overseas limited partnership may be registered as a Guernsey limited partnership.

1. (1) An overseas limited partnership may apply to the Greffier to be registered as a Guernsey limited partnership in accordance with the provisions of these Regulations.

(2) In these Regulations "registered as a Guernsey limited partnership" means –

^a Ordres en Conseil Vol. XXXVI, p. 264; there are amendments not relevant to these regulations.

- (a) ceasing to be registered as a limited partnership in the place in which it was incorporated or registered or (if applicable) where it is now registered, and
- (b) becoming registered as a limited partnership in the Register,

and "**registration**" as a Guernsey limited partnership and other related expressions shall be construed accordingly.

(3) An "**overseas limited partnership**" means a limited partnership registered or incorporated under the law of any place outside Guernsey.

Registration must be authorised by foreign law and comply with partnership agreement. etc.

2. An overseas limited partnership cannot be registered as a Guernsey limited partnership unless –

- (a) the overseas limited partnership is able under the law of the place in which it was registered or incorporated or (if applicable) where it is now registered to be registered as a Guernsey limited partnership, and
- (b) the overseas limited partnership has complied with the requirements of –

- (i) that law, and
- (ii) its partnership agreement or other equivalent constitutive documents,

in relation to its registration as a Guernsey limited partnership, including any requirement that the limited partners of the overseas limited partnership, or a specified proportion of them, consent to its registration as a Guernsey limited partnership and any other requirement for a resolution of the limited partners or other action on the part of the overseas limited partnership or its limited partners.

Limited partnership cannot be in liquidation, etc.

3. An overseas limited partnership cannot be registered as a Guernsey limited partnership if –

- (a) the limited partnership is being wound up or dissolved, is in liquidation or has been declared insolvent,
- (b) a receiver or administrator has been appointed, whether by a court or not, in relation to any property of the limited partnership,
- (c) the limited partnership has entered into a composition or arrangement with a creditor (other

than a composition or arrangement approved by the Commission), and the composition or arrangement is in force,

(d) an application has been made to a court, whether in Guernsey or elsewhere –

(i) to put the limited partnership into liquidation, to wind it up or dissolve it or to have it declared insolvent,

(ii) for the approval of a composition or arrangement between the limited partnership and a creditor (other than a composition or arrangement approved by the Commission), or

(iii) for the appointment of a receiver or administrator in relation to any property of the limited partnership,

and (in each case) the application has not been finally disposed of, or

(e) the limited partnership is empowered by its partnership agreement or other equivalent constitutive documents to issue bearer instruments of any kind.

Limited partnership must satisfy solvency test.

4. An overseas limited partnership cannot be registered as a Guernsey limited partnership unless it would, immediately after registration, satisfy the solvency test.

Supervised limited partnerships cannot be registered without consent of Commission.

5. (1) An overseas limited partnership which –
- (a) intends to become a supervised limited partnership in Guernsey, or
 - (b) is the equivalent of a supervised limited partnership in the place outside Guernsey from which it is migrating,

cannot be registered as a Guernsey limited partnership except under the authority of, and in accordance with the terms and conditions of, the written consent of the Commission.

- (2) The Commission may –
- (a) vary or revoke any term or condition subject to which a consent under paragraph (1) was granted, and
 - (b) impose, and subsequently vary or revoke, any new term or condition in relation to any such consent.

Application for consent of Commission under regulation 5.

6. (1) An application for the consent of the Commission under regulation 5 shall be made in such form and manner as the Commission may require and shall include or be accompanied by –

- (a) the migration details,
- (b) evidence acceptable to the Commission that the registration of the overseas limited partnership as a Guernsey limited partnership is in accordance with and is not prohibited by the provisions of these Regulations,
- (c) such other information and documents, verified in such manner, as the Commission may require, whether in relation to any particular application or otherwise, and
- (d) such fee as may be prescribed by regulations of the Committee under section 36 of the Law.

(2) A person who contravenes, or who causes or permits any contravention of, any term or condition of a consent of the Commission under this regulation is guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding

level 5 on the uniform scale,

- (b) on conviction on indictment, to a fine.

Application for registration as a Guernsey limited partnership.

7. (1) An application for registration as a Guernsey limited partnership shall be made to the Greffier.

(2) The application, which may only be made by a corporate services provider, shall be in such form as the Greffier may require and shall include or be accompanied by –

- (a) the migration details,
- (b) a copy of any consent required under regulation 5,
- (d) a declaration of compliance (migration),
- (e) such other information and documents, verified in such manner, as the Greffier may require, whether in relation to any particular application or otherwise, and
- (f) such fee as may be prescribed by regulations of the Committee under section 36 of the Law.

(3) The application may propose the date on which registration as a Guernsey limited partnership is to have effect, but that date must not be later than 3 months after the date of the application.

Migration details.

8. (1) In these Regulations "migration details" means –
- (a) a copy of the limited partnership's certificate of incorporation or registration in the place in which it was incorporated or registered or (if applicable) where it is now registered,
 - (b) a statement of the limited partnership's current general partners,
 - (c) a statement of the limited partnership's general partners as proposed immediately after registration as a Guernsey limited partnership,
 - (d) a statement of the address of the limited partnership's registered office –
 - (i) in the place in which it was incorporated or registered or (if applicable) where it is now registered, and
 - (ii) as proposed, in Guernsey,
 - (e) a statement of the limited partnership's proposed name, which shall comply with section 5 of the Law,

- (f) a statement of the nature and principal place of the limited partnership's business, both current and as proposed immediately after registration as a Guernsey limited partnership,
- (g) the term for which the partnership is entered into (which may be unlimited) and the date of the commencement of that term or, if no term is fixed for the duration of the partnership, a statement to that effect (in which case the partnership shall, unless dissolved earlier, be dissolved upon the expiration of a period of 30 years beginning on the date of its registration),
- (h) a statement of whether or not the limited partnership is, upon registration, to have legal personality (and a statement that the limited partnership is, upon registration, to have legal personality shall have effect, for the purposes of subsections (1) and (2) of section 9A of the Law, as the election and declaration that the limited partnership shall have legal personality referred to in those subsections; and sections 9A and 9C of the Law shall apply accordingly),
- (i) evidence acceptable to the Greffier or Commission (as the case may be) that the limited partnership is not prohibited from being registered in Guernsey by regulation 2, 3 or 4, and

(j) evidence satisfactory to the Greffier or Commission (as the case may be) that, on the date of registration, the limited partnership will cease to be incorporated and registered under the law of any place outside Guernsey.

(2) The statement of –

(a) the limited partnership's current general partners,

(b) the limited partnership's general partners as proposed immediately after registration as a Guernsey limited partnership,

shall comprise the full name and address of every general partner (the address being, in the case of a legal person or a partnership, the address of its registered office or, if none, its principal office).

(3) The partnership agreement which is to be binding on the limited partnership immediately after its registration in Guernsey may be different from its current partnership agreement if the amendments were made in accordance with the terms of the current partnership agreement or other equivalent constitutive documents.

Effect of registration.

9. (1) Upon receipt of the application for registration as a Guernsey limited partnership, the Greffier shall –

- (a) register the limited partnership in the Register by inscribing its name therein,
- (b) issue a certificate of registration in respect of the limited partnership, stating the partnership's name and registered office and the date of registration, which is (unless the certificate ceases to be valid in the circumstances described in section 9(3) of the Law) conclusive evidence that the limited partnership is duly registered, and
- (c) allocate a registration number to the limited partnership,

and, subject to the provisions of this Part of these Regulations, the limited partnership shall thereupon be treated in all respects as a limited partnership within the meaning of the Law.

(2) If the application for registration proposes a date on which the registration as a Guernsey limited partnership is to have effect and that date is later than the date on which the Greffier issues the certificate of registration, then the date stated on the certificate as the date of registration shall be the proposed date.

Cancellation of registration.

10. (1) Where an overseas limited partnership is registered as a Guernsey limited partnership under this Part of these Regulations, the limited partnership shall, as soon as possible, file with the Greffier any certificate or other document issued under the law of the place in which the limited partnership has

ceased to be incorporated and registered evidencing the fact that the limited partnership has ceased to be incorporated and registered under the law thereof.

(2) If the Royal Court is satisfied that –

- (a) an overseas limited partnership has been registered as a Guernsey limited partnership pursuant to the provisions of this Part of these Regulations, and
- (b) the limited partnership continues to be incorporated or registered under the law of any place outside Guernsey,

the Royal Court may, in its absolute discretion on the application of –

- (i) the limited partnership or any of its partners or creditors,
- (ii) the Commission, or
- (iii) the Greffier,

make an order for the removal of the limited partnership's name from the Register.

(3) An order under paragraph (2) may be made subject to such terms and conditions and subject to such penalty as the Royal Court thinks fit.

(4) On the making of an order under paragraph (2) the limited partnership's registration in Guernsey shall (unless the Royal Court orders otherwise) be void ab initio.

PART II
MIGRATION OF LIMITED PARTNERSHIPS
FROM GUERNSEY TO OVERSEAS

Limited partnerships may transfer registration to another place.

11. (1) A limited partnership may apply to the Greffier for its particulars of registration to be removed from the Register in accordance with the provisions of these Regulations.

(2) In these Regulations "removed from the Register" means the removal of the particulars of registration of a limited partnership from the Register for the purposes of its becoming registered as a limited partnership under the law of a place outside Guernsey, and related expressions shall be construed accordingly.

Limited partnerships cannot transfer registration without compliance with partnership agreement, etc.

12. A limited partnership cannot be removed from the Register unless the limited partnership has complied with the requirements of –

- (a) these Regulations and the Law, and
- (b) its partnership agreement and other constitutive documents,

in relation to its removal from the Register, including any requirement that the limited partners, or a specified proportion of them, consent to its removal from the Register and any other requirement for a resolution of the limited partners or other action on the part of the limited partnership or its limited partners.

Limited partnerships cannot transfer registration if being wound up, etc.

13. A limited partnership cannot be removed from the Register if –
- (a) the partnership's affairs have been declared to be in a state of *désastre* at a meeting of arresting creditors held before a Commissioner,
 - (b) an interim vesting order has been made against the partnership in respect of any of its real property in the Bailiwick,
 - (c) any of the events or circumstances specified in section 28(1) of the Law upon the occurrence of which the partnership is to be dissolved has occurred,
 - (d) the Royal Court has made an order under section 24(1)(ii) of the Law directing the deletion from the Register of the particulars of registration of the partnership,
 - (e) the Royal Court has made an order for the dissolution of the partnership under section 29(1) of the Law,

- (f) the Royal Court has made an order for the appointment of a liquidator under section 29(2) or 30(3) of the Law,
- (g) an application has been made to the Royal Court for an order described in subparagraph (d), (e) or (f),
- (h) a composition or arrangement with creditors has been entered into in respect of the partnership whereby its creditors will receive less than 100p in the pound,
- (i) possession or control has been taken of any of the partnership's property or affairs by or on behalf of creditors or the holders of debentures issued by it.

Limited partnerships cannot transfer registration unless they satisfy solvency test.

14. A limited partnership cannot be removed from the Register unless it would immediately before removal satisfy the solvency test.

Limited partnerships cannot transfer registration without giving notice to creditors.

15. (1) A limited partnership cannot be removed from the Register unless, not less than 28 days before the day on which the removal from the Register is proposed to take effect, the general partners give written notice of the proposed removal to every creditor of the limited partnership.

(2) The general partners of the limited partnership shall deliver to the Greffier evidence acceptable to the Greffier that the removal of the limited partnership from the Register is not prohibited by paragraph (1) and upon receipt thereof the Greffier shall give notice of the proposed removal from the Register.

Supervised limited partnerships cannot transfer registration without consent of Commission.

16. (1) A supervised limited partnership cannot be removed from the Register except under the authority of, and in accordance with the terms and conditions of, the written consent of the Commission.

- (2) The Commission may –
- (a) vary or revoke any term or condition subject to which a consent under paragraph (1) was granted, and
 - (b) impose, and subsequently vary or revoke, any new term or condition in relation to any such consent.

Application for consent of Commission under regulation 16.

17. (1) An application for the consent of the Commission under regulation 16 shall be made in such form and manner as the Commission may require and shall include or be accompanied by –

- (a) evidence acceptable to the Commission that the removal of the limited partnership from the Register is in accordance with and is not prohibited by the provisions of these Regulations,

- (b) confirmation from Her Majesty's Procurer and the Director of the Revenue Service that they have no objection to the removal of the limited partnership from the Register,
- (c) evidence acceptable to the Commission that the limited partnership is able to become registered under the law of the place in question,
- (d) such other information and documents, verified in such manner, as the Commission may require, whether in relation to any particular application or otherwise, and
- (e) such fee as may be prescribed by regulations of the Committee under section 36 of the Law.

(2) A person who contravenes, or who causes or permits any contravention of, any term or condition of a consent of the Commission under this regulation is guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

Application for transfer of registration.

18. (1) An application for removal from the Register shall be made to the Greffier.

(2) The application, which may only be made by a corporate services provider, shall be in such form as the Greffier may require and shall include or be accompanied by –

- (a) a copy of any consent required under regulation 16,
- (b) confirmation from Her Majesty's Procureur and the Director of the Revenue Service that they have no objection to the removal of the limited partnership from the Register,
- (c) evidence acceptable to the Greffier that the removal of the limited partnership from the Register is not prohibited by regulation 12, 13, 14 or 15,
- (d) evidence acceptable to the Greffier that on the date of the removal of the limited partnership's name from the Register the limited partnership will be registered under the law of the place in question,
- (e) a declaration of compliance (migration),

- (f) such other information and documents, verified in such manner, as the Greffier may require, whether in relation to any particular application or otherwise, and
- (g) such fee as may be prescribed by regulations of the Committee under section 36 of the Law.

Effect of transfer.

19. Upon receipt of the documents specified in regulation 18, and not less than 28 days after giving notice under regulation 15(2), the Greffier shall –

- (a) delete the inscription relating to the limited partnership from the Register,
- (b) enter a notice in the Register stating that the limited partnership's name has, pursuant to the provisions of this regulation, been removed from the Register for the purpose of the limited partnership becoming registered under the law of the place specified in the notice, and
- (c) publish the fact that the limited partnership has been removed from the Register,

and, from the date of removal from the Register, the limited partnership ceases to be a limited partnership within the meaning of the Law.

Cancellation of transfer.

20. (1) Where a limited partnership is removed from the Register under this Part of these Regulations, the limited partnership shall, as soon as possible, file with the Greffier any certificate or other document issued under the law of the place in which the limited partnership has become registered evidencing the fact that the limited partnership has become registered under the law thereof.

(2) If the Royal Court is satisfied that –

- (a) a limited partnership's name has been removed from the Register pursuant to the provisions of this Part of these Regulations, and
- (b) the limited partnership has not become registered under the law of any place outside Guernsey,

the Royal Court may, in its absolute discretion on the application of –

- (i) the limited partnership or any of its partners or creditors,
- (ii) the Commission, or
- (iii) the Greffier,

make an order for the restoration of the limited partnership's name to the Register.

(3) An order under paragraph (2) may be made subject to such terms and conditions and subject to such penalty as the Royal Court thinks fit.

(4) On the making of an order under paragraph (2) the removal of the limited partnership's name from the Register shall (unless the Royal Court otherwise orders) be void ab initio.

PART III
GENERAL AND MISCELLANEOUS

Declaration of compliance (migration).

21. A declaration of compliance (migration) is a declaration, signed by

- (a) a general partner of the limited partnership concerned, and
- (b) the corporate services provider which completed the application to the Greffier for migration,

that all the requirements of the Law and these Regulations in respect of –

- (i) registration as a Guernsey limited partnership, or, as the case may be,
- (ii) the removal of a limited partnership from the Register,

have been fulfilled.

Documents in a language other than English.

22. Where a document provided to the Greffier or Commission under these Regulations is not in the English language, a translation of it into the English language (made by such person or class or description or person, in such form, and verified and/or certified in such manner, as the Greffier or, as the case may be, the Commission may require) must also be provided.

Terminology used in other jurisdictions.

23. References in these Regulations to limited partnerships, certificates of incorporation or registration, liquidators, winding up, dissolution, general and limited partners or any other matter concerning a limited partnership include references to their equivalents in the law of the place outside Guernsey from which or to which a limited partnership is migrating.

Registration or transfer not to prejudice continuity of limited partnership's existence.

24. (1) Registration as a Guernsey limited partnership or removal of a limited partnership from the Register does not -

- (a) create a new person,
- (b) prejudice or affect the identity or continuity of the person constituted by the limited partnership,

(2) Subsection (1)(b) has effect notwithstanding the provisions of -

- (a) section 8(1) of the Law (limited partnership must continue to be registered), and

- (b) section 11(1)(b)(ii) of the Law (limited partnership deemed not to be a limited partnership in default of continuing registration).

(3) Upon registration as a Guernsey limited partnership or removal of a limited partnership from the Register –

- (a) all property and rights to which the limited partnership or the partners thereof were entitled immediately before registration or removal remain their respective property and rights,
- (b) the limited partnership and the partners thereof remain subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which they were respectively subject immediately before registration or removal,
- (c) all actions and other legal proceedings which immediately before registration or removal could have been instituted or continued by or against the limited partnership or the partners thereof may be instituted or continued by or against them respectively after registration or removal, and
- (d) a conviction, ruling, order or judgment in favour of or against the limited partnership or the partners thereof before registration or removal

may be enforced by or against them respectively after registration or removal.

Powers of Royal Court to make orders as to migration.

25. (1) If the Royal Court is satisfied that the removal of a limited partnership from the Register under regulation 19 would unfairly prejudice a limited partner or creditor of the limited partnership or any other person to whom the limited partnership is under any obligation or liability, it may, on the application of that person made at any time before the date on which the removal of the limited partnership takes place, or within such further time as the Royal Court may in any particular case allow, make an order in relation to the removal, including, without limitation, an order –

- (a) directing that the removal of the limited partnership from the Register shall not take place, or shall only take place subject to such terms and conditions as the Royal Court thinks fit,
- (b) modifying the proposal for the removal of the limited partnership from the Register in such manner as may be specified in the order,
- (c) directing the limited partnership or its general partners to reconsider the proposal for the removal of the limited partnership from the Register or any part of that proposal.

(2) An order under paragraph (1) may be made on such terms and conditions and subject to such penalty as the Royal Court thinks fit.

Migration not a default.

26. For the avoidance of doubt, the migration of a limited partnership in accordance with the provisions of these Regulations is not, of itself –

- (a) a breach of contract or confidence or otherwise a civil wrong,
- (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities, or
- (c) such as to give rise to any remedy, by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

Greffier may rely upon filed documents and declaration of compliance.

27. The Greffier, when performing the functions of Greffier under the provisions of these Regulations and the Law, may rely upon –

- (a) the application for registration as a Guernsey limited partnership, or, as the case may be, for removal of a limited partnership from the Register,
- (b) all documents and information filed with the Greffier in connection with the application, and

(b) the declaration of compliance (migration),

in all respects and accordingly is not bound to enquire further as to whether, in relation to the application, documents, information and declaration and the matters required to be stated therein, those provisions have been complied with.

Amendment of the Law.

28. In section 8(2)(d)(v) of the Law after the words "the term for which the partnership is entered into" insert "(which may be unlimited)".

Interpretation.

29. In these Regulations, unless the contrary intention appears, the words and expressions listed below shall be construed as follows –

"**Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^b,

"**Committee**" means the States Committee for Economic Development,

"**corporate services provider**" means a person who holds a full fiduciary licence within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,

^b Ordres en Conseil Vol. XXX, p. 243; there are amendments not material to these Regulations.

"declaration of compliance (migration)" : see regulation 21,

"Greffier" means Her Majesty's Greffier,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"Law" means the Limited Partnerships (Guernsey) Law, 1995^c,

"migration details" : see regulation 8,

"overseas limited partnership" means a limited partnership registered or incorporated under the law of any place outside Guernsey,

"registered" and **"registration"** as a Guernsey limited partnership : see regulation 1,

"removed from the Register" : see regulation 11,

"solvency test" : for the purposes of these Regulations a limited partnership satisfies the solvency test if –

- (a) it is able to pay its debts as they become due,
- (b) the value of the its assets is greater than the value

^c Ordres en Conseil Vol. XXXVI, p. 264; there are amendments not material to these Regulations.

of its liabilities, and

- (c) in the case of a supervised limited partnership, it satisfies any other requirements as to solvency imposed in relation to it by or under –
 - (i) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
 - (ii) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
 - (iii) the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000,
 - (iv) the Insurance Business (Bailiwick of Guernsey) Law, 2002, and
 - (v) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

"supervised limited partnership" is a limited partnership which –

- (a) holds a licence under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 or an authorisation or registration under section 13 of

that Law,

- (b) is a closed-ended investment scheme within the meaning of section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (c) is a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (d) is a licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, or
- (e) is a licensee within the meaning of –
 - (i) the Insurance Business (Bailiwick of Guernsey) Law, 2002, or
 - (ii) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

and, unless the contrary intention appears, other expressions have the same meaning as in the Law.

Citation.

30. These Regulations may be cited as the Limited Partnerships (Guernsey) (Migration) Regulations, 2020.

Commencement.

31. These Regulations shall come into force on the 30th July, 2020.

Dated this 30th day of July, 2020



Deputy C. Parkinson

President of the States Committee for Economic Development

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations, made under the Limited Partnerships (Guernsey) Law, 1995, provide for the inward migration, and registration in Guernsey, of overseas limited partnerships registered or incorporated in another jurisdiction; and for the outward migration, and registration in another jurisdiction, of limited partnerships registered in Guernsey.