

## **Limited Partnerships as a business vehicle**

Limited Partnerships are becoming increasingly popular as an investment vehicle for “silent” partners and other such investors who want to limit their exposure to liability. They are a cross between a corporation and a partnership with some very distinguishing features. They are governed by the *Limited Partnerships Act 1990* (the “Act”).

The principal feature of a limited partnership is that the liability of each limited partner is limited to the amount of money or property that that partner contributes to the Limited Partnership. The Act allows a limited partner to contribute money or property to a limited partnership but not services.

A limited partnership must consist of one or more persons who are general partners and one or more persons who are limited partners. A person may be both a general partner and a limited partner at the same time in the same limited partnership. A “person” is defined in the Act to include, among other things, an individual, a sole proprietorship and a corporation.

A limited partner is, simply put, a passive investor rather than an active participant in the operation of the limited partnership and must remain passive in order to ensure that they do not lose their limited liability protection. They share in the profits of the limited partnership in proportion to their contributions, unless there is a limited partnership agreement which may give priority to one or more limited partners as to profits. No profits may be paid out to a limited partner if the payment would reduce the assets of the limited partnership to an amount that is insufficient to cover the liabilities of the limited partnership to persons who are not limited or general partners.

A limited partner may also loan money and transact business with the limited partnership. In this regard, the limited partner will rank equally with other creditors of the limited partnership. A limited partner may not hold any assets of the limited partnership as collateral security for any loan to the limited partnership.

A limited partner has the same rights as a general partner to inspect the records of the limited partnership and to receive full disclosure of the affairs of the partnership. The limited partner may also from time to time investigate the state and progress of the limited partnership business and advise as to its management. It may also act as a contractor, agent or employee of the limited partnership or the general partner. However, whilst a limited partner may give advice from time to time as to the management of the limited partnership, if a limited partner takes part in the control of the business that limited partner loses his or her limited liability and becomes a general partner.

A limited partner’s interest is assignable. The assignee may become a “substituted limited partner” if all the partners (except the assignor) consent in writing, or if the limited partnership agreement so provides. An assignee who is entitled to become a limited partner does so when the declaration confirming the assignment is filed with the Ministry of Government Services. A substituted limited partner has all the rights and powers of the limited partner who assigned his interest, and is subject to all the restrictions and liabilities of his assignor.

A general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners. They require the consent or ratification of all limited partners for certain actions set out in the Act; which includes admitting a person as a

general partner, admitting a person as a limited partner (unless the right to do so is given in the partnership agreement) or consenting to a judgement against the limited partnership. This list may be added to in a limited partnership agreement.

The use of a limited partnership as an investment vehicle is attractive to many investors. It should always be borne in mind however, that such persons should not have any involvement in the control or day to day management of the business of the limited partnership. If they do, they run the risk of losing the limited liability protection afforded by their status as limited partners.

If you would like to discuss further the benefits of limited partnerships and whether it is a suitable vehicle for your business venture the please contact Nicola Melchers at 519 837 2100 Ext. 363 or [nmelchers@smithvaleriot.com](mailto:nmelchers@smithvaleriot.com).