

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4775 GIBRALTAR Thursday 29th October 2020

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B. 20/20

## LIMITED PARTNERSHIPS BILL 2020

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SCHEDULE  
NAMES OF LIMITED PARTNERSHIPS



# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4775 GIBRALTAR Thursday 29th October 2020

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B. 20/20

## BILL

FOR

AN ACT to provide for the establishment, regulation and dissolution of limited partnerships and for connected purposes.

ENACTED by the Legislature of Gibraltar.

*Preliminary*

### **Title.**

1. This Act may be cited as the Limited Partnerships Act 2020.

### **Commencement.**

2. This Act comes into operation on the day appointed by the Minister by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

### **Interpretation.**

3.(1) In this Act, unless the context otherwise requires—

“the 1927 Act” means the Limited Partnership Act;

“the Charges Register” means the register of charges requiring registration under this Act, kept under section 29;

“EIF” means an experienced investor fund authorised in accordance with the Financial Services (Experienced Investor Funds) Regulations 2020;

“general partner” means a partner in a limited partnership who is not a limited partner;

“GFSC” means the Gibraltar Financial Services Commission, within the meaning of section 21 of the Financial Services Act 2019;

“liability” includes any debt, obligation or liability of any kind, wherever and however incurred;

“limited partner” means a partner in a limited partnership whose liability for the liabilities of the partnership is limited in accordance with this Act;

“limited partnership” means a partnership formed and registered in accordance with this Act;

“the Minister” means the Minister responsible for finance;

“prescribed” means prescribed in regulations made by the Minister;

“the Register” means the register of limited partnerships kept under section 15;

“the Registrar” means the Registrar of Limited Partnerships appointed under section 17;  
and

“specified form” means in the form specified by the Registrar.

(2) In this Act, references to a notice or other document being “delivered” to the Registrar means delivered by hand to the office of the Registrar, sent by post to that office or delivered by any other means that the Registrar may specify (and cognate expressions are to be construed accordingly).

#### **Application of partnership law.**

4. Subject to the provisions of this Act, the Partnership Act and the rules of equity and of common law applicable to partnerships (so far as not inconsistent with the express provisions of the Partnership Act), apply to limited partnerships.

#### *Composition and formation of limited partnerships*

#### **Composition of limited partnership.**

5.(1) A limited partnership is a partnership consisting of—

(a) at least one general partner; and

(b) at least one limited partner.

(2) A body corporate may be a general partner or limited partner.

(3) The general partners are jointly and severally liable for the debts and obligations of the limited partnership.

(4) The limited partners, who on entering the limited partnership contribute or agree to contribute a specified sum as capital or property, are not liable for the debts or obligations of the limited partnership beyond the amount so contributed or agreed to be contributed.

(5) If a limited partner receives from the partnership during its continuance any payment representing a return of any part of his or her contribution to the partnership, the limited partner is liable for the debts and obligations of the limited partnership up to the amount so received.

**Formation of limited partnership.**

6.(1) A limited partnership is formed on the registration of the partnership under this Act as a limited partnership.

(2) A partnership which purports to be a limited partnership but which is not registered under this Act is to be treated as a general partnership and each of its partners is to be treated as a general partner.

*Registration of limited partnerships*

**Application for registration.**

7.(1) An application for the registration of a limited partnership is made by delivering to the Registrar a statement signed by each partner or proposed partner.

(2) The statement must be in the specified form and contain the following particulars—

- (a) the name of the partnership (which must conform with the requirements in the Schedule);
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) the full name of each of the partners;
- (e) the term, if any, for which the partnership is entered into and the date of its commencement;
- (f) a statement that the partnership is limited; and
- (g) in relation to each limited partner a statement to the effect that the partner is a limited partner whose liability to contribute is limited to the extent of the amount specified in the statement (being the specified sum as capital or property that the limited partner has agreed to contribute to the partnership).

(3) The Schedule makes further provision about the names of limited partnerships.

**Registration of company as limited partnership.**

8.(1) A company limited by shares, by guarantee or both may alter its status to a limited partnership by re-registration under this Act.

(2) An application for re-registration under this section is made by delivering to the Registrar the statement specified in section 7 and, in addition—

- (a) the special resolution that the company should be so re-registered passed by the vote of each member of that company entitled to receive notice of an extraordinary meeting of the company, conforming to the requirements of paragraph 1 of Schedule 1 to the Companies Act 2014; and
- (b) the documents required to be lodged with the Registrar of Companies for the purposes of paragraph 2(1)(a) of Schedule 1 to that Act.

(3) Those documents are—

- (a) a printed copy of the memorandum and articles as altered in pursuance of the special resolution for the company to become a limited partnership containing—
  - (i) the name of the company and the name under which registration as a limited partnership is to be sought,
  - (ii) the proposed principal place of business of the limited partnership,
  - (iii) the date on which it is proposed to register under this Act, and
  - (iv) a copy of the statement to be submitted to the Registrar in accordance with this section;
- (b) a certificate of good standing in respect of the company issued by the Registrar of Companies;
- (c) where the company carries on in or from Gibraltar a business which is—
  - (i) a regulated activity which it is permitted or authorised to carry on under the Financial Services Act 2019; or
  - (ii) licensed or authorised in accordance with a Community requirement other than one falling within sub-paragraph (i) or (ii),

evidence of the consent of the competent authority under the relevant legislation to the company de-registering under the Companies Act 2014 and registering under this Act;

- (d) evidence to the satisfaction of the Registrar of Companies that no proceedings for insolvency have been commenced against the company in Gibraltar; and



- (e) evidence to the satisfaction of the Registrar of Companies that any mortgage or other charge recorded in respect of that company has been discharged in accordance with the Companies Act 2014 or the consent in writing to the de-registration of every registered mortgagee or charge has been obtained.

(4) In this section and in section 9 the “Registrar of Companies” means the person appointed under section 420 of the Companies Act 2014.

### **Registration of limited partnerships.**

9.(1) If an application for registration of a limited partnership has been made in accordance with section 7 and the Registrar is satisfied that the requirements of this Act for registration as a limited partnership are met, the Registrar must register the limited partnership.

(2) If an application for re-registration as a limited partnership has been made in accordance with section 8 and the Registrar is satisfied that the requirements of this Act for registration as a limited partnership are met, the Registrar must issue a notice in writing to that effect to the Registrar of Companies, stating the date and time of the intended registration of the company as a limited partnership under this Act.

(3) When the Registrar is notified by the Registrar of Companies of the company’s deregistration and continuation for the purpose of registration as a limited partnership, in accordance with Schedule 1 to the Companies Act 2014, the Registrar must register the limited partnership and issue a certificate of registration and continuation as a limited partnership.

(4) A limited partnership registered under subsection (3) as a result of the procedure in section 8 and Schedule 1 to the Companies Act 2014 is, on the date and time referred to in subsection (2), a continuation of the undertaking de-registered by virtue of the procedures in that Schedule.

(5) Where, in connection with an application under section 7 or 8, a statutory declaration that the application complies with the requirements of the relevant section is made and delivered to the Registrar by—

- (a) a solicitor of the Supreme Court or a barrister lawfully acting as a solicitor engaged in the formation of the limited partnership; or
- (b) a person named in the application as a partner or the secretary of the limited partnership,

the Registrar is entitled to rely on the declaration as sufficient evidence of compliance.

*Election of separate legal personality*

**Legal personality of limited partnerships.**

10.(1) A limited partnership may, but need not, have separate legal personality.

(2) The general partners of a limited partnership must elect whether or not the limited partnership is to have legal personality and deliver a declaration to that effect to the Registrar when registering the limited partnership under section 7 or re-registering a company as a limited partnership under section 8.

(3) A declaration under subsection (2) must be in the specified form and signed by any one or more of the general partners.

(4) Where the general partners elect, in accordance with subsection (2) –

(a) that a limited partnership is to have legal personality–

(i) the limited partnership has legal personality; and

(ii) the certificate of registration issued under section 16 must state that fact; or

(b) that a limited partnership is not to have legal personality—

(i) the limited partnership does not have legal personality; and

(ii) the certificate of registration issued under section 16 must state that fact.

(5) An election made in accordance with this section is final and irrevocable.

(6) If the general partners fail to make an election under subsection (2), they are deemed to have elected that the limited partnership is to have legal personality.

(7) The separate legal personality of a limited partnership–

(a) is unaffected by any change in the persons that may from time to time be or cease to be partners in accordance with this Act; and

(b) does not affect the liability of the partners to contribute to the debts and obligations of the limited partnership in the event that it is wound up.

(8) Despite subsection (4)(b), a limited partnership which does not have legal personality must comply with the Register of Ultimate Beneficial Owners Regulations 2017 as if it were a legal entity with legal personality.

(9) The Minister may by regulations amend subsection (8) by adding, modifying or removing provisions.

**Legal personality of 1927 Act partnerships.**

11.(1) A limited partnership which was registered under the 1927 Act and has legal personality by virtue of section 11 of that Act continues to do so unless the general partners, within three months of the commencement of this section—

- (a) elect that the limited partnership is to cease to have legal personality; and
- (b) deliver a declaration to that effect to the Registrar.

(2) In the case of a limited partnership which is an EIF, an election under subsection (1) may only be made with the consent of the GFSC.

(3) A declaration under subsection (1)(b) must—

- (a) be in the specified form and signed by any one or more of the general partners; and
- (b) where subsection (2) applies, be accompanied by evidence of the GFSC's consent.

(4) Where, in accordance with subsections (1) and (2), the general partners elect that a limited partnership is to cease to have legal personality—

- (a) the limited partnership does not have legal personality; and
- (b) the Registrar must issue a revised certificate of registration which states that fact.

(5) An election made in accordance with this section is final and irrevocable.

*Registered office and secretary.*

**Registered office and secretary.**

12.(1) A limited partnership must deliver to the Registrar notice of the partnership's registered office in Gibraltar to which all communications and notices may be addressed.

(2) Where none of the partners in a limited partnership is resident in Gibraltar, the partnership must appoint a secretary resident in Gibraltar and deliver to the Registrar notice of the appointment.

(3) A notice under subsection (1) or (2) must be in the specified form and be delivered to the Registrar—

- (a) before the limited partnership begins to carry on business or within 28 days of registration (whichever is the sooner); or
- (b) where subsection (2) applies to a limited partnership at any time after it begins to carry on business, within 28 days of it becoming applicable.

*Notification and advertising of changes*

**Changes in registered particulars.**

13.(1) A limited partnership, within seven days of the change, must deliver to the Registrar a statement in the specified form setting out the nature of any change to the following registered particulars of the limited partnership—

- (a) the partnership's name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) the partners or the name of any partner;
- (e) the term or character of the partnership;
- (f) the sum contributed by any limited partner;
- (g) the liability of any partner by reason of becoming—
  - (i) a limited partner instead of a general partner; or
  - (ii) a general partner instead of a limited partner;
- (h) the location of registered office; or
- (i) the secretary notified under section 12(2).

(2) If a limited partnership fails to comply with subsection (1), each general partner commits an offence and is liable on summary conviction to a fine at one-fifth of level 1 on the standard scale for each day that the default continues.

**Advertising changes in Gazette.**

14.(1) Any arrangement or transaction by which—

- (a) a person will cease to be a general partner in a limited partnership but become a limited partner in that partnership; or
- (b) the interest of a limited partner in a limited partnership will be assigned to another person,

must be advertised without delay by notice in the Gazette.

(2) For the purposes of this Act, an arrangement or transaction to which subsection (1) applies is of no effect until it has been advertised in accordance with that subsection.

*Register of limited partnerships*

**The Register.**

15.(1) The Registrar must keep a register of the limited partnerships registered under this Act (“the Register”).

(2) The Register may be kept in the form that the Registrar considers appropriate but must include records of—

- (a) the information contained in documents delivered to the Registrar under this Act or any other enactment; and
- (b) the certificates issued by the Registrar under this Act or any other enactment.

(3) The Registrar must make the information recorded in the Register available for public inspection, on payment of the prescribed fee, at the office of the Registrar during the ordinary business hours of that office.

**Certificates of registration etc.**

16.(1) The Registrar, at the time of registering a limited partnership or recording a change in its composition, must issue to the general partners a certificate as to its formation and composition at that time.

(2) The Registrar, on recording any other document delivered under this Act, must issue a certificate of its registration to the person from whom the document is received.

(3) The Registrar may, on application and subject to payment of the prescribed fee, issue to the applicant a certificate as to the formation and composition of a limited partnership or as to any other particulars recorded in the Register.

(4) A certificate under this section is to be in the form that the Registrar considers appropriate.

(5) A certificate under this section—

- (a) as to the formation of a limited partnership, is conclusive evidence that the limited partnership was formed on the date of registration referred to in the certificate;
- (b) as to the composition of a limited partnership, is (unless the contrary is established) conclusive evidence that the partnership consisted at the relevant time of the general partners and limited partners named in the certificate; and
- (c) as to any other particular of a limited partnership recorded in the Register, is (unless the contrary is established) conclusive evidence of that particular.

(6) A certificate under this section, if certified to be a true copy by the Registrar (whom it is not necessary to prove to be the Registrar) may be received in evidence in all legal proceedings, whether civil or criminal.

*Registrar of Limited Partnerships*

**Registrar.**

17.(1) The Minister must appoint a Registrar of Limited Partnerships for the purposes of this Act.

(2) The Minister may appoint one or more Assistant Registrars of Limited Partnerships Companies and, subject to any directions given by the Registrar, an Assistant Registrar may perform any of the Registrar's functions under this Act.

*Relationships between partners*

**Limited partner not to take part in management of partnership**

18.(1) A limited partner must not take part in the management of the business of the limited partnership and does not have power to bind the limited partnership.

(2) If a limited partner takes part in the management of the business of the limited partnership, the limited partner is liable, as if the partner were a general partner, for the liabilities of the partnership incurred while the limited partner takes part in the management of that business.

(3) A limited partner is not to be regarded as taking part in the management of the business of the limited partnership merely because the limited partner takes any action such as—

- (a) exercising partner prerogatives;
- (b) providing an opinion or advice to the limited partnership or its managers;
- (c) carrying out control or supervisory measures;
- (d) granting loans, guarantees or securities;
- (e) giving any other type of assistance to the limited partnership or its affiliates; or
- (f) giving authorisation to the managers, as provided for in the limited partnership agreement, for acts outside their powers.

(4) Without limiting subsection (3), the actions to which that subsection applies include, in particular—

- (a) taking part in a decision about participating in any investment opportunity alongside the limited partnership;

- (b) discussing the prospects of the partnership business;
- (c) consulting or advising with a general partner or any person appointed to manage or advise the partnership about its affairs or accounts;
- (d) taking part in a decision regarding changes in the persons responsible for the day-to-day management of the partnership;
- (e) in respect of an advisory committee of the partnership—
  - (i) appointing or nominating a person to represent the limited partner on that committee;
  - (ii) authorising the person to take any action in that capacity (including voting) that would not involve taking part in the management of the partnership if taken by a limited partner; and
  - (iii) revoking such an appointment or nomination or authorisation;
- (f) taking part in a decision about how the limited partnership, if it is a collective investment scheme, should exercise any right as an investor in another collective investment scheme (a “master fund”), if the limited partnership’s exercise of the right would not cause the limited partnership to be liable for the debts or obligations of the master fund beyond the amount contributed, or agreed to be contributed, by the limited partnership to the master fund;
- (g) taking part in a decision approving or authorising an action proposed to be taken by a general partner or another person appointed to manage the limited partnership, including in particular a proposal in relation to—
  - (i) the disposal of all or part of the limited partnership business or the acquisition of another business by the limited partnership;
  - (ii) the acquisition or disposal of a type of investment or a particular investment by the limited partnership;
  - (iii) the exercise of the limited partnership’s rights in respect of an investment;
  - (iv) the participation by a limited partner in a particular investment by the limited partnership;
  - (v) the incurring, extension, variation or discharge of debt by the limited partnership; or
  - (vi) the creation, extension, variation or discharge of any other obligation owed by the limited partnership.

(5) Nothing in subsection (3) or (4) authorises a limited partner to act as the controller of a limited partnership which is an EIF, in contravention of regulation 10(3) of the Financial Services (Experienced Investor Funds) Regulations 2020.

(6) The fact that a decision that affects or relates to a limited partnership involves an actual or potential conflict of interest is not of itself a reason to regard a limited partner who takes part in the decision as taking part in the management of the limited partnership business for the purposes of subsection (1).

### **Decisions of partners.**

19.(1) Unless otherwise provided in the limited partnership agreement, the voting rights of each partner shall be in proportion to such partner's partnership interests.

(2) The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all partners, and such consent may be either express or inferred from a course of dealing.

(3) Any difference arising as to ordinary matters connected with the limited partnership business may be decided by a majority of the partners, but no change may be made in the nature of the limited partnership business without the consent of all existing partners.

(4) The provisions of this section may be varied by an agreement between, or the consent of, the partners.

### **Change in partners.**

20.(1) A limited partner may, with the consent of the general partners, assign the limited partner's interest in the limited partnership and, in that event, the assignee is to be a limited partner in substitution for the assignor with all the rights and obligations of the assignor.

(2) A person may be admitted as a partner in a limited partnership without the need to obtain the consent of any limited partner.

(3) The provisions of this section may be varied by an agreement between, or the consent of, the partners.

### *Dissolution and cessation of limited partnerships*

#### **Dissolution not available in certain cases**

21.(1) Subject to the terms of any agreement between the partners in a limited partnership—

- (a) a limited partner is not entitled to dissolve the partnership by notice;
- (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed the limited partner's share of the partnership property to be charged for the limited partner's separate liabilities; and



- (c) the death, bankruptcy or retirement or, in the case of a body corporate, the dissolution, of a limited partner does not dissolve the partnership.

(2) The fact that a limited partner in a limited partnership is suffering from mental disorder within the meaning of the Mental Health Act 2016 is not a ground for dissolution of the partnership unless the Court of Protection so orders in exercise of its powers under Part 5 of that Act.

### **Winding up by general partners**

22.(1) If the affairs of a limited partnership are to be wound up by the partners with a view to its dissolution, the winding up is to be carried out by the general partners unless the Supreme Court orders otherwise.

(2) If a limited partnership is dissolved at a time when the partnership does not have a general partner, the affairs of the limited partnership must be wound up by a person who is not a limited partner, appointed by those who are limited partners at that time, subject to any express or implied agreement between them as to the winding up of the affairs of the partnership.

### *Issue of securities and instruments*

#### **Issue of securities or instruments by limited partnership EIFs.**

23.(1) Interests in a limited partnership that is an EIF may be represented by securities.

(2) Securities may be issued by such a limited partnership as the general partners think proper—

- (a) to such persons and at such times;
- (b) outright or as a security for any debt, liability or obligation of the limited partnership or a third party; and
- (c) in such form and on such terms as to time of repayment, rate of interest, price of issue or sale, payment of premium or bonus upon redemption or repayment or otherwise.

(3) In this section “securities” means shares, bonds, notes, loans or other debt securities or instruments.

*Registration of charges*

**Charges created by limited partnership.**

24.(1) The capital of a limited partnership may be made a security for a loan, debt or other obligation.

(2) The instrument creating any security to which this section applies must be in the specified form or a form as near to that specified as circumstances permit.

(3) On the production of an instrument in the proper form, the Registrar must record it as provided for in this Act and its recording has the effect provided for in this Act.

**Registration of charges.**

25.(1) A limited partnership that creates a charge to which this section applies must deliver the prescribed particulars of the charge, together with the instrument (if any) by which the charge is created or evidenced, to the Registrar for registration before the end of the period allowed for registration.

(2) Registration of a charge to which this section applies may instead be effected on the application of a person interested in it.

(3) Where registration is effected on the application of a person other than the limited partnership, that person is entitled to recover from the partnership the amount of any prescribed fees paid to the Registrar on registration.

(4) This section applies to the following charges—

- (a) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
- (b) a charge on land or any interest in land;
- (c) a charge on book debts of the limited partnership;
- (d) a floating charge on the limited partnership's property or undertaking; or
- (e) a charge on goodwill or on any intellectual property.

(5) In this section and sections 26 to 39 “charge” includes mortgage.

(6) Where a negotiable instrument has been given to secure the payment of any book debts of a limited partnership, the deposit of the instrument for the purpose of securing an advance to the limited partnership is not to be treated as a charge on those book debts for the purposes of this section.

(7) The holding of debentures entitling the holder to a charge on land is not to be treated as an interest in land for the purposes of this section.

(8) If a limited partnership fails to comply with subsection (1), an offence is committed by—

- (a) the limited partnership; and
- (b) every partner or officer of it who is knowingly in default.

(9) A person who commits an offence under this section is liable on summary conviction to a fine at level 2 on the standard scale for each day that the default continues.

(10) Subsection (8) does not apply if registration of the charge has been effected on the application of some other person.

#### **Consequence of failure to register charges.**

26.(1) If a limited partnership creates a charge to which section 25 applies, unless that section is complied with, the charge is void (so far as any security on the limited partnership's property or undertaking is conferred by it) against—

- (a) a liquidator of the partnership;
- (b) an administrator of the partnership; and
- (c) a creditor of the partnership,

(2) Subsection (1) applies without limiting any contract or obligation for repayment of the money secured by the charge and, when a charge becomes void under this section, the money secured by it immediately becomes payable.

#### **Charges existing on property acquired.**

27.(1) This section applies where a limited partnership acquires property which is subject to a charge of a kind which, if it had been created by the limited partnership after the acquisition of the property, would have been required to be registered under section 25.

(2) The limited partnership must deliver the prescribed particulars of the charge, together with a certified copy of the instrument (if any) by which the charge is created or evidenced, to the Registrar for registration.

(3) Subsection (2) must be complied with before the end of the period allowed for registration.

(4) If a limited partnership fails to comply with subsection (2), an offence is committed by—

- (a) the limited partnership; and
- (b) every partner or officer of it who is knowingly in default.

(5) A person who commits an offence under this section is liable on summary conviction to a fine at level 2 on the standard scale.

### **Charges created in or over property outside Gibraltar.**

28.(1) Where a charge is created outside Gibraltar comprising property situated outside Gibraltar, the delivery to the Registrar of a verified copy of the instrument by which the charge is created or evidenced has the same effect for the purposes of this Act as the delivery of the instrument itself.

(2) Where a charge is created in Gibraltar but comprises property outside Gibraltar, the instrument creating or purporting to create the charge may be sent for registration under section 28 even if further proceedings may be necessary to make the charge valid or effectual according to the law of the country or territory in which the property is situated.

### *The Charges Register*

### **Register of charges to be kept by Registrar.**

29.(1) The Registrar must keep, with respect to each limited partnership, a register of all the charges requiring registration under this Act (“the Charges Register”).

(2) The Register may be kept in the form that the Registrar considers appropriate.

(3) The Registrar must enter in the Charges Register the following particulars in respect of each charge—

- (a) if it is a charge—
  - (i) created by the limited partnership, the date of its creation; or
  - (ii) which was existing on property acquired by the limited partnership, the date of the acquisition;
- (b) the amount secured by the charge;
- (c) short particulars of the property charged; and
- (d) the persons entitled to the charge.

(4) The Registrar must give a certificate of the registration of any charge registered in accordance with this Act, stating the amount secured by the charge.

(5) A certificate issued under subsection (4) is conclusive evidence that the requirements of this Act as to registration have been satisfied.

(6) The Charges Register may be inspected by any person on payment of the prescribed fee.

**Period allowed for registration.**

30.(1) The period allowed for registration of a charge created by a limited partnership is—

- (a) 21 days after the day on which the charge is created; or
- (b) if the charge is created outside Gibraltar, 21 days after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post and if despatched with due diligence, have been received in Gibraltar.

(2) The period allowed for registration of a charge to which property acquired by a limited partnership is subject is—

- (a) 21 days after the day on which the acquisition is completed; or
- (b) if the property is situated and the charge was created outside Gibraltar, 21 days after the day on which the instrument by which the charge is created or evidenced (or a copy of it) could, in due course of post and if despatched with due diligence, have been received in Gibraltar.

**Registration of enforcement of security.**

31.(1) A person must give notice to the Registrar if the person—

- (a) obtains an order for the appointment of a receiver or manager of a limited partnership's property; or
- (b) appoints such a receiver or manager under powers contained in an instrument.

(2) Notice under subsection (2) must be given within seven days of the order or appointment being made.

(3) Where a person appointed as receiver or manager of a limited partnership's property under powers contained in an instrument ceases to act in that capacity, the person must, on so ceasing, give the Registrar notice to that effect.

(4) The Registrar must, on payment of the prescribed fee, enter in the Charges Register a fact of which notice is given under this section.

(5) A person who fails to comply with subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine at one half of level 1 on the standard scale for each day that the default continues.

**Entries of satisfaction.**

32.(1) Subsection (2) applies if a statement is delivered to the Registrar verifying with respect to a registered charge—

- (a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) that part of the property charged has been released from the charge or has ceased to form part of the limited partnership's property.

(2) The Registrar may enter on the Charges Register a memorandum of satisfaction in whole or in part, or of the fact part of the property has been released from the charge or has ceased to form part of the limited partnership's property (as the case may be).

(3) Where the Registrar enters a memorandum of satisfaction in whole the Registrar must, if required, send the limited partnership a copy of the memorandum.

**Power of Court to rectify Charges Register.**

33.(1) Subsection (3) applies if the Supreme Court is satisfied that—

- (a) there has been—
  - (i) an omission to register a charge within the time required by this Act; or
  - (ii) an omission or mis-statement in any charge or in a memorandum of satisfaction, statement or notice delivered to the Registrar in accordance with this Act; and
- (b) the requirement in subsection (2) is met.

(2) The requirement is that the court is satisfied—

- (a) that the omission or mis-statement—
  - (i) was accidental or due to inadvertence or to some other sufficient cause; or
  - (ii) is not of a nature to prejudice the position of creditors or partners of the limited partnership; or
- (b) that on other grounds it is just and equitable to grant relief.

(3) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration be extended or the omission or mis-statement be rectified (as the case may be).

*Keeping and inspection of records*

**Limited partnership to keep copies of instruments creating charges.**

34. A limited partnership must keep at its registered office a copy of every instrument creating a charge requiring registration under this Act.

**Limited partnership's register of charges**

35.(1) A limited partnership must keep a register of charges at its registered office and enter in it—

- (a) all charges specifically affecting property of the limited partnership, and
- (b) all floating charges on the whole or part of the limited partnership's property or undertaking.

(2) Each entry must give a short description of the property charged, the amount of the charge and the names of the persons entitled to it.

(3) A partner or officer of the limited partnership who knowingly and wilfully authorises or permits the omission of an entry required to be made by this section commits an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

**Inspection of instruments creating charges and register of charges.**

36.(1) This section applies to—

- (a) the documents (copies of instruments creating charges) required to be kept under section 34; and
- (b) the register of charges required to be kept under section 35.

(2) The documents and register must be open to inspection at the limited partnership's registered office during normal business hours—

- (a) by any creditor or partner without charge; and
- (b) by any other person on payment of any reasonable fee that the limited partnership may determine.

(3) The requirement that the documents and register must be open to inspection during business hours—

- (a) is subject to any reasonable restrictions that the limited partnership may impose; and
- (b) is met if the documents and register are open to inspection for not less than two hours in each business day.

(4) If a limited partnership fails to comply with subsection (2) or inspection under that subsection is refused, an offence is committed by—

- (a) the limited partnership; and
- (b) every partner or officer of it who is knowingly and wilfully in default.

(5) A person who commits an offence under this section is liable on summary conviction to a fine at one half of level 1 on the standard scale and, in respect of a refusal of inspection, a further fine of one fifth of level 1 on the standard scale for each day that the refusal continues.

(6) If an inspection under subsection (2) is refused, the Supreme Court may by order compel an immediate inspection.

*Charges previously registered under Companies Act 2014*

**Recording of instruments registered under the Companies Act.**

37. If a limited partnership was previously registered as a company under the Companies Act 2014 and—

- (b) charges are registered under that Act in respect of the company; and
- (c) at the time of applying for registration under this Act, the written consent of every holder of a registered charge is delivered to the Registrar,

on the production of the documents creating those charges the Registrar may record them in the Charges Register in order of rank, priority and precedence in which they were registered in the register maintained under the Companies Act 2014.

*Priority and transfer of charges, etc.*

**Priority of charges.**

38. Where more than one charge is recorded in respect of the same limited partnership, the charges rank in priority between each other according to the date and time when each charge is recorded in the Charges Register and not according to the dates and times of the charges (and regardless of any express, implied or constructive notice).



**Transfer of charges.**

39. A charge recorded in the Charges Register may be transferred to any person and, on delivery of an instrument of transfer in the specified form, the Registrar must record that instrument in accordance with section 29.

**Chargees not treated as partner.**

40. Except so far as may be necessary for making the capital of a limited partnership available as a security for the secured debt, by reason of a recorded charge the chargee is not to be treated as being a partner and the chargor is not to be treated as having ceased to be a partner.

*Regulation-making power*

**Regulations.**

41.(1) The Minister may by regulations make any supplementary, incidental, consequential, transitory, transitional or saving provision which the Minister considers necessary or expedient for the purposes of, or in consequence of, or for giving full effect to any provision of this Act.

(2) Regulations under this section may, in particular, prescribe—

- (a) the forms to be used for the purposes of this Act;
- (b) the fees to be paid to the Registrar under this Act;
- (c) the duties or additional duties to be performed by the Registrar for the purposes of this Act; or
- (d) the general conduct and regulation of registration under this Act and any incidental matters.

(3) Regulations under this section may amend, repeal or revoke any enactment other than one contained in an Act or instrument passed or made after this Act is passed.

(4) Regulations under this section may make different provision for different purposes.

*Savings and repeal*

**Business Names Registration Act.**

42. Nothing in this Act affects the provisions of the Business Names Registration Act.

**Saving for 1927 Act partnerships.**

43.(1) On the commencement of this section—

- (a) the register of limited partnerships kept in accordance with section 12 of the 1927 Act is to be treated as forming part of the Register required to be kept under section 15; and
- (b) the register of charges kept in accordance with section 13D of the 1927 Act is to be treated as forming part of the Charges Register required to be kept under section 29.

(2) A partnership which, immediately before the commencement of this section was registered as a limited partnership under the 1927 Act, is to be treated on that commencement as a limited partnership registered under this Act.

**Repeal of 1927 Act.**

44. The Limited Partnerships Act is repealed.

**SCHEDULE**

section 7(3)

**NAMES OF LIMITED PARTNERSHIPS**

**Name to indicate status.**

1. The name of a limited partnership must end with—

- (a) the expression “limited partnership”; or
- (b) the abbreviation “lp” or “LP”.

**Registration of names.**

2.(1) A limited partnership must not be registered by a name—

- (a) which includes, otherwise than at the end of the name—
  - (i) the expression “limited partnership” or
  - (ii) either of the abbreviations “lp” and “LP”;
- (b) which is the same as a name appearing in the index kept under section 27(8) of the Companies Act 2014;
- (c) the use of which by the limited partnership would, in the opinion of the Registrar, constitute a criminal offence; or
- (d) which in the opinion of the Registrar is offensive.

(2) Except with the consent of the Minister, a limited partnership must not be registered by a name which—

- (a) in the opinion of the Registrar would be likely to give the impression that it is connected in any way with the Government of Gibraltar; or
- (b) includes any word or expression for the time being specified in regulations made under section 27(5) of the Companies Act 2014.

**Change of name.**

3.(1) A limited partnership may change its name at any time.

(2) Where a limited partnership has been registered by a name which is the same as or, in the opinion of the Registrar, too like a name—

- (a) appearing at the time of registration in the index kept under section 27(8) of the Companies Act 2014; or

(b) which should have appeared in the index at that time,

the Registrar may, within twelve months of the time of registration, direct the limited partnership to change its name within such period as the Registrar may specify.

(3) If it appears to the Registrar—

- (a) that misleading information has been given for the purpose of the registration of a limited partnership by a particular name; or
- (b) that undertakings or assurances have been given for that purpose and have not been fulfilled,

the Registrar may, within five years of the date of its registration by that name, direct the limited partnership to change its name within such period as the Registrar may specify.

(4) If, in the opinion of the Registrar, the name by which a limited partnership is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, the Registrar may direct the limited partnership to change its name within such period as the Registrar may specify.

(5) Where a direction is given under sub-paragraph (4), the limited partnership may, within three weeks from the date of the direction apply to the Supreme Court to set it aside and the court may set the direction aside or confirm it and, if it confirms it, shall specify the period within which it must be complied with.

(6) Where a direction has been given under sub-paragraph (2), (3) or (4) specifying a period within which a limited partnership must change its name, the Registrar may at any time before that period ends extend it by a further direction.

(7) A direction under this paragraph must be given in writing.

(8) If a limited partnership fails to comply with a direction under this paragraph—

- (a) the limited partnership; and
- (b) any general partner in default,

commits an offence and is liable, on summary conviction, to a fine at 3 on the standard scale.

#### **Notification of change of name.**

4.(1) A limited partnership which changes its name must deliver notice of the change to the Registrar.

(2) A notice under sub-paragraph (1) must be in the specified form and signed by any one or more of the general partners.

(3) Where the Registrar receives a notice under this paragraph, unless the new name is one by which a limited partnership may not be registered, the Registrar must—

- (a) issue a certificate of the change of name to the limited partnership; and
- (b) arrange for the new name to be entered in the index kept under section 27(8) of the Companies Act 2014; and

(4) The change of name has effect from the date on which the certificate is issued.

#### **Effect of change of name.**

5.(1) A change of a limited partnership’s name does not affect any rights or obligations of the partnership or render defective any legal proceedings by or against it.

(3) Any legal proceedings that might have been continued or commenced against the limited partnership by its former name may be continued or commenced against it by its new name.

#### **Improper use of “limited partnership” etc.**

6.(1) A person, other than a limited partnership, who carries on business under a name or title which includes, at the end of the name or title—

- (a) the expression “limited partnership”;
- (b) any contraction or imitation of that expression; or
- (c) the abbreviation “lp” or “LP”,

commits an offence and is liable, on summary conviction, to a fine at level 3 on the standard scale.

#### **Similarity of names.**

7. In determining, for the purposes of this Schedule, whether one name is the same as another, the following are to be disregarded—

- (a) the definite article; where it is the first word of the name;
- (b) the following words and expressions, where they appear at the end of the name—
  - “limited partnership”;
  - “company”;
  - “and company”;

“company limited”;

“and company limited”;

“limited”;

“unlimited”;

“public limited company”;

(c) abbreviations of any of those words or expressions, where they appear at the end of the name; and

(d) type and case of letters, accents, spaces between letters and punctuation marks;

and “and” and “&” are to be taken to be the same.

## **EXPLANATORY MEMORANDUM**

This Bill restates and modernises the existing Limited Partnerships Act (the “1927 Act”) and also introduces the following changes:

1. Limited partnerships will no longer be required to have legal personality. The Bill provides general partners with the ability, upon registering a limited partnership or re-registering a company as a limited partnership, to elect whether or not a limited partnership is to have legal personality. If the general partners fail to make such an election, they are deemed to have elected that the limited partnership is to have legal personality. Such an election is final and irrevocable (clause 10).
2. Limited partnerships registered under the 1927 Act will continue to have legal personality unless the general partners, within three months of the commencement of section 11, elect to end the limited partnership’s legal personality and deliver a declaration to that effect to the Registrar. In the case of a limited partnership which is an experienced investor fund, such a declaration can only be made with the consent of the GFSC. (clause 11).
3. The Bill provides that a limited partner may undertake certain actions which will not amount to taking part in the management of the limited partnership (clause 18).
4. The Bill provides that, unless otherwise varied by agreement between or the consent of the partners, voting rights of each partner will be in proportion to their partnership interest (clause 19).
5. Interests in a limited partnership that is a collective investment scheme (other than a private scheme) authorised under the Financial Services Act 2019 may be represented by shares, bonds, notes, loans or other debt securities or instruments which may be issued by the limited partnership (clause 23).
6. The Bill repeals the 1927 Act (clause 44).

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