

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Limited Partnerships (Guernsey) Amendment Law, 2006

(Registered on the Records of the Island of Guernsey
on the 2nd July, 2007.)



2007

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ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

2nd day of July, 2007 before Geoffrey Robert Rowland, Esquire, Bailiff; present:- David Charles Lowe, OBE, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie, and David Osmond Le Conte, Esquire Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 13 June 2007 approving and ratifying a Projet de Loi entitled the Limited Partnerships (Guernsey) (Amendment) Law, 2006, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ORDERED that the said Order in Council be registered on the records of this Island.



At the Court at Buckingham Palace

THE 13th DAY OF JUNE 2007

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 28th September 2005, the States of Deliberation at a meeting on 26th April 2006 approved a *Projet de Loi* entitled the Limited Partnerships (Guernsey) (Amendment) Law 2006 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction The Limited Partnerships (Guernsey) (Amendment) Law 2006, and to order that it shall have force of law in the Islands of Guernsey, Herm and Jethou.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Meriel McCullagh

PROJET DE LOI

ENTITLED

The Limited Partnerships (Guernsey) (Amendment) Law, 2006

ARRANGEMENT OF SECTIONS

1. Repeal of requirement to file partnership agreement.
2. Status of limited partnerships with legal personality.
3. Appointment of auditors.
4. Partnerships and bodies corporate may be auditors.
5. Time within which auditors' report must be deposited.
6. Financial year may be up to 18 months.
7. Interpretation.
8. Citation.
9. Commencement.

PROJET DE LOI

ENTITLED

The Limited Partnerships (Guernsey) (Amendment) Law, 2006

THE STATES, in pursuance of their Resolution of the 28th September, 2005^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Repeal of requirement to file partnership agreement.

1. Section 8(2)(b) of the Limited Partnerships (Guernsey) Law, 1995^b ("**the 1995 Law**") (copy of partnership agreement to be filed with Greffier upon registration) is repealed.

Status of limited partnerships with legal personality.

2. In section 9A of the 1995 Law (legal personality of limited partnerships), after subsection (4) insert the following subsection -

"(5) For the avoidance of doubt and notwithstanding the provisions of section 1(2), a limited partnership with legal personality is a body corporate."

^a Article XIII of Billet d'État No. XIV of 2005.

^b Orders in Council No. XII of 1995, No. V of 1996 and No. IV of 2001.

Appointment of auditors.

3. (1) For section 16 of the 1995 Law (appointment of auditors) substitute the following section -

"Appointment of auditors.

16. (1) The general partners of every limited partnership may, subject to the provisions of any regulations made under section 43(f)(ii), appoint an auditor to act in relation to the affairs of the partnership.

(2) The general partners of a limited partnership shall, subject to the provisions of any regulations made under section 43(f)(ii), appoint an auditor to act in relation to the affairs of the partnership if -

- (a) required to do so by the partnership agreement,
- (b) required to do so by limited partners whose contribution is greater than 50 per cent of the total contribution of all limited partners,
- (c) required to do so in such circumstances, or by such body, as may be prescribed, or
- (d) the limited partnership is one to which subsection (3) applies.

(3) Subject to subsection (4), this subsection applies to limited partnerships carrying on the business of, or concerned in the provision of the services of -

- (a) banking,

- (b) insurance,
- (c) investment,
- (d) asset management or administration,
- (e) trusteeship, or
- (f) company or trust formation or administration.

(4) Without prejudice to section 7A(1) of the Control of Borrowing Ordinance (conditions imposed upon limited partnerships upon registration), subsection (3) shall not apply where -

- (a) the limited partnership is a closed-ended limited partnership within the meaning of paragraph 1 of Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987^c, and
- (b) the partnership agreement requires information on the state and prospects of the assets of the

^c Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; and by No's XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

partnership business to be provided to the limited partners in relation to each financial year of the partnership.

(5) An auditor may be removed from office -

- (a) where he has been appointed under subsection (1), by the general partners,
- (b) where he has been appointed under subsection (2)(a), if it is no longer required by the partnership agreement,
- (c) where he has been appointed under subsection (2)(b), by limited partners whose contribution is greater than 50 per cent of the total contribution of all limited partners,
- (d) where he has been appointed under subsection (2)(c), in such circumstances, or by such body, as may be prescribed,
- (e) where he has been appointed under subsection (2)(d), if the partnership is no longer one to which subsection (3) applies.

(6) The Royal Court may, on the application of any partner or creditor of a limited partnership, remove from office any auditor of the partnership, and appoint another to act in his place.

(7) Where -

- (a) an auditor is appointed under subsection (2),
- (b) that auditor has not been removed from office under subsection (5), and
- (c) at any time no auditor is acting in relation to the affairs of the partnership,

the Royal Court may, on the application of any partner or creditor of the partnership, appoint an auditor to act.

(8) The remuneration of a partnership's auditors shall be determined by the general partners or, where the auditors are appointed by the Royal Court, by the Royal Court.

(9) For the avoidance of doubt, the removal from office of an auditor shall not affect any rights that the auditor has against the partnership."

(2) In section 12(4) of the 1995 Law (participation of partners in business of limited partnership) for paragraph (j) substitute the following paragraph-

"(j) he requires the appointment or removal of an auditor, or applies to the Royal Court for the appointment or removal of an auditor, under section 16; or".

(3) In section 31(8)(b) of the 1995 Law (liability of partners for

breaching relevant provisions) for "16(1)" substitute "16(2)".

(4) The Limited Partnerships (Application of Audit Requirements) Regulations, 2005^d are repealed.

Partnerships and bodies corporate may be auditors.

4. (1) In section 17 of the 1995 Law, for subsection (6) (only individuals may be auditors of limited partnerships) substitute the following subsection -

"(6) A limited partnership may appoint as its auditor an individual, partnership or body corporate.".

(2) Section 43(f)(i) of the 1995 Law (regulations may permit a body corporate or partnership to be auditor of a limited partnership) is repealed.

Time within which auditors' report must be deposited.

5. In section 18(3) of the 1995 Law (time within which auditors' report must be deposited with Commission) for the words "four months" substitute the words "six months or such shorter period as may be required in the partnership agreement".

First financial year may be up to 18 months.

6. In section 41(1) of the 1995 Law (interpretation), for the definition of "financial year" substitute -

"**financial year**", in relation to a limited partnership, means -

^d G.S.I. 2005 No. 32.

- (a) a period of up to 18 months beginning on the date on which the partnership is registered, and thereafter
- (b) each period of 12 months (or such other period as the Commission may by notice in writing allow in any particular case),

at the end of which the balance of the accounts of the partnership is struck;".

Interpretation.

7. (1) In this Law, "**the 1995 Law**" means the Limited Partnerships (Guernsey) Law, 1995.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

8. This Law may be cited as the Limited Partnerships (Guernsey) (Amendment) Law, 2006.

Commencement.

9. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions.