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Lawyers and Notary Public

Limited partnership – the new investment structure of choice?

The Limited Partnerships Act 2008 introduced a new vehicle for doing business in New Zealand: the limited partnership. Although the main aim was to attract venture capital into New Zealand, it might also prove to be the investment structure of choice for local investors.

Common overseas, limited partnerships allow investors to enjoy the benefits of investing through a separate legal entity and the protection of limited liability, at the same time as enjoying some of the tax and other advantages of partnerships.

If you are planning a new business, or raising capital, the limited partnership should be one of the vehicles you consider, alongside traditional structures such as a standard partnership, company, loss attributing qualifying company (LAQC) or trust.

The Partners

A limited partnership must have at least one general partner and at least one limited partner. The general and the limited partner cannot be the same entity, but there are no limits on the types of entity they can be. So the partners could be individuals, trusts, companies, unincorporated bodies or even partnerships.

The general partner, as agent and active manager, is responsible for the day-to-day management of the partnership. He or she may contribute to the capital, but is not required to. However, the general partner is liable for all the limited partnership's liabilities over and above the partnership's assets.

Limited partners are passive investors, who contribute most, or even all, of the capital to the venture. But limited partners' liability is limited to the amount of capital they contribute, provided they do not take part in managing the partnership.

Features and advantages

A limited partnership can suit investors with different needs, different tax profiles and who want different levels of involvement in the business.

Take Brad, for example, who has the ideas, time and energy to manage a new business, but very little start up capital. Tina is willing to invest but is going overseas and is content to follow developments at a distance. Tom, an overseas investor who is exempt from tax in his home country, will contribute capital

provided he can maintain his tax status. Two other local investors, an individual and a company, are happy to come on board as limited partners.

Like a company, the limited partnership is created by registration with the Registrar of Companies. Brad, as general partner, is liable for all the debts of the partnership (though he could form a company to act as general partner and limit his liability that way). As agent for the limited partnership, he can contract with third parties without the authority of the limited partners. The limited partners' liability, like company shareholders' liability, is limited to the amount of their contributions.

Succession issues aren't a problem. The limited partnership does not terminate automatically if a new partner comes on board, or if an existing one exits. Instead, the partnership is dissolved when it is removed from the register. So a limited partnership can be formed for a particular venture, or for a particular period. Just how this will work will be set out in the Partnership Agreement, which may set out the circumstances where the partnership may terminate. Brad's authority as general partner continues after the terminating event, however, until he can wind up the partnership.

A significant benefit of the limited partnership structure is that profits and losses "flow through" the partnership, for taxation purposes, to the partners (unlike companies for example, which are themselves taxed). So if the partnership interest is held by a company or a trust, losses can flow through and be retained in that company or trust to offset future income for tax purposes.

Profits are returned via distribution, usually in proportion to the individual partnership contributions. As with companies though, distributions are subject to the partnership being solvent after it has made the distribution.

All in all, a limited partnership may well be an appropriate investment structure for you.



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If you would like further information on any of the topics in this article, please contact the writer.