

CORPORATE MATTERS: PARTNERSHIPS

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In previous issues, we discussed limited liability companies and the various benefits of using such entities, including pass-through taxation, asset protection, ease of formation and flexibility.¹ There are partnerships that can be used to achieve the same results that may be of particular interest to individuals from jurisdictions where the limited liability company is not recognized to the same extent as it is in the United States. These are “Limited Partnerships,” “Limited Liability Partnerships” and “Limited Liability Limited Partnerships.” We thought it may be helpful to outline the differences between these three types of partnerships. Research should be conducted on a state-by-state basis depending on the jurisdiction one is interested in – the following discussion focusses on Delaware.

LIMITED PARTNERSHIP

A Limited Partnership is a partnership where one or more of the owners are general partners and one or more of the owners are limited partners. The general partners have unlimited liability and are liable for all of the partnership’s debts and obligations. The limited partners have limited liability – limited to the amount of capital they have invested in the partnership. General partners control the partnership and are responsible for its operation. Limited partners have no say in the operation of the partnership and are subject to losing liability protection if they are found to be participating in the management of the partnership. The Delaware Revised Uniform Limited Partnership Act (“DRLPA”) provides that “a limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of the rights and power of a limited partner, he or she participates in the control of the business.”²

LIMITED LIABILITY PARTNERSHIP

A Limited Liability Partnership is a general partnership for which an election has been made to obtain limited liability for all of the general partners. Unlike a Limited Partnership, in a Limited Liability Partnership there are no limited partners and all partners can participate in the management of the partnership. As a general rule, the partners of a Delaware general partnership are liable for all of the obligations of the partnership. Once qualified as a Limited Liability Partnership, the partners are protected from this general rule and the obligations of the partnership arising subsequent to the entity’s qualification as a Limited Liability Partnership are solely the

¹ See Insights, Vol. 1 No. 8 “[Corporate Matters: Delaware or New York L.L.C.?](#)” Vol. 1 No. 10 “[Corporate Matters: Series Limited Liability Companies.](#)” and Vol. 2 No. 2 “[Corporate Matters: Limited Liability Company Agreements.](#)”

² 6 Del. C §17-303 *et seq.*

obligations of the partnership. Note, however, that a partner may still have liability for his or her own actions.

LIMITED LIABILITY LIMITED PARTNERSHIP

A Limited Partnership may be formed as, or may become, a Limited Liability Limited Partnership by filing a statement of qualification with the Secretary of State.³ A Limited Liability Limited Partnership is a Limited Partnership with limited liability for all partners, including general partners.

In order to become a Limited Liability Limited Partnership in Delaware, a Limited Partnership must satisfy the requirements of §§17-214 of the DRLPA, namely:

- The Limited Partnership’s partnership agreement must permit the filing of a Statement of Qualification;
- The Limited Partnership must file a Statement of Qualification containing:
 - The name of the partnership,
 - The address of its registered office,
 - The name and address of its registered agent for service of process,
 - The number of partners at the time the statement is effective,
 - A statement that the partnership elects to be a Limited Liability Limited Partnership, and
 - The date or time upon which the statement is to be effective;
- The Limited Partnership must pay a filing fee; and
- The Limited Partnership must include as the last words or letters in its name “Limited Liability Limited Partnership,” “L.L.L.P.” or “LLLP.”

The Limited Partnership’s status as a Limited Liability Limited Partnership is effective upon the filing of the Statement of Qualification.

In order to retain its status as a Limited Liability Limited Partnership, the entity must file an Annual Report together with the applicable fee. Failure to file the Annual Report or pay the required filing may result in the partnership’s status being revoked.

CONCLUSION

To summarize the differences between the above partnerships and how they play out in practice:

- If a general partnership is formed by two partners to conduct a business activity, both partners are liable for the debts and obligations of the partnership.
- If the two partners had instead formed a Limited Partnership, one would be the general partner (and would, therefore, be liable for the partnership’s

³ 6 Del. C §17-214 *et seq.*

“A Limited Liability Limited Partnership is a Limited Partnership with limited liability for all partners, including general partners.”

debts) and the other would be the limited partner (and would have limited liability).

- If a Limited Liability Partnership is formed, neither of the partners is subject to personal liability.
- If a Limited Liability Limited Partnership were formed, neither the general partner nor the limited partner would be liable for the partnership's debts.

There may not be any reason why an existing U.S. Limited Partnership would elect to be treated as a Limited Liability Limited Partnership. If the structure is in place, either the existing general partner is a corporate entity with limited liability or the creditworthiness of the general partner is crucial to the operation of the partnership. Taking that liability away may be detrimental to the operations of the entity. Note, also, that qualifying as a Limited Liability Limited Partnership does not relieve a general partner from obligations incurred prior to such qualification. Furthermore, in the U.S. those desirous of forming an entity with pass-through tax treatment and limited liability for all parties would most likely simply form a limited liability company.

In Canada, however, U.S. limited liability companies are not recognized as partnerships for tax purposes and are, therefore, subject to double taxation. Limited Liability Limited Partnerships have not, to date, been subject to the same interpretation and, therefore, are very useful for Canadians wishing to invest in the U.S.

