

Key Facts Partnerships

New Zealand's Limited Partnership legislation is modelled on similar regimes in other jurisdictions.

This relatively new legislation is important in an international context because now New Zealand, an OECD country which is not on any black lists, offers advisors a recognised fiscally transparent structure which can be employed in international planning. In addition, the LP should be recognised as a separate legal entity in countries which may not be familiar with trusts.

The Basics

The LP resembles a limited company in two key respects:

- It has a separate legal personality
- The liability of its limited partners is limited

The LP is similar to a partnership in that:

- It is transparent for tax purposes
- There are no capital requirements for formation

The LP is comprised of:

- At least one New Zealand-resident* general partner (and, optional, other general partners) – responsible for managing the activities of the LP
- Limited partners – passive investors in the LP

Key Features

- Any person (legal or natural) may be a partner.

- Non-resident partners will not be taxable in New Zealand provided that the LP is not in receipt of any New Zealand-source income.
- The legislation provides a non-exclusive list of “safe harbour” activities which limited partners can undertake without being deemed a general partner.
- A partner can change its status. For example, a general partner can become a limited partner and vice versa. However, the same legal person may not simultaneously be both a general partner and a limited partner of the LP.
- The addition or removal of limited partners is achieved simply by a partnership resolution, deed of accession (if applicable) and notifying the Registrar of Companies (the Registrar) of the change.
- There is no limit on the number of limited partners; the only limitation is that at all times there must be at least one limited and one general partner.

*Or an individual who lives in Australia and is a director of an Australian registered company; a general partner which is a limited partnership or a partnership governed by the Partnership Act 1908 with a New Zealand-individual-resident general partner or a general partner who lives in Australia and is a director of an Australian registered company; an overseas company registered in New Zealand under the Companies Act 1993 with at least a New Zealand-individual-resident director partner or a director who lives in Australia and is a director of an Australian registered company.

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Formation & Filing

- An LP comes into existence upon registration with the New Zealand Companies Office and may be formed for any legal purpose.
- An LP is required to have the following:
 - A New Zealand-resident* general partner (but may also have additional non-resident general partners)
 - A written partnership agreement
 - Registered Office address
 - Address for service of process
 - Postal address
 - Email address
- The Registered Office address and address for service of process must be a physical address in New Zealand.
- A register of limited partnerships is maintained by the Registrar.
- The following information must be filed with the Registrar in regard to each limited partner:
 - Full legal name
 - Date and place of birth, passport copy and residential address proof (for an individual)
 - Date of registration, corporate formation and control documentation, address of Registered Office and address for service (if a body corporate)

*Or an individual who lives in Australia and is a director of an Australian registered company; a general partner which is a limited partnership or a partnership governed by the Partnership Act 1908 with a New Zealand-individual-resident general partner or a general partner who lives in Australia and is a director of an Australian registered company; an overseas company registered in New Zealand under the Companies Act 1993 with at least a New Zealand-individual-resident director partner or a director who lives in Australia and is a director of an Australian registered company.

The Registrar may not disclose any of the above information to the public.

- The following information about the LP is available on the public record:
 - Formation date
 - Registered number
 - Registered Office address
 - Name and address of the general partner
 - Address for service of process

Capital Requirement

- Both general and limited partners may, but are not required to, make a capital contribution to the LP.
- A general partner's liability for the debts and liabilities of the LP only arises if the partnership itself is unable to satisfy its debts and liabilities.
- Limited partners are responsible for the liabilities of the LP only to the extent of their capital contributions.
- As the rules governing LPs do not require any of the partners to contribute to the capital of the partnership, reduction of the partnership's capital is subject only to a solvency test.
- A general partner may authorise a distribution to a limited partner if it is satisfied, on reasonable grounds, that immediately after the distribution is made, the partnership will be solvent.

Annual Returns

- An annual return must be submitted by the LP in the same way as is required for companies. The annual return includes:
 - The name of the LP and registration number
 - Date of annual return
 - Details of the LP's Registered Office, address for service and its postal address

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- Details of the general partners including those who have ceased to act since the last annual return
- Details of the limited partners including those who have ceased to act since the last annual return
- The annual return must be signed by a general partner or by a lawyer or chartered accountant authorised by the LP for that purpose.

Financial and Taxation Balance Date

- The default accounting balance date for all LPs is 31 March, but may be changed by the general partner.
- An LP must have a balance date within each calendar year, with the exception of the years of its registration and de-registration.
- In the event that the LP's first or last balance date is not within the same year, accounts may be prepared for a period not exceeding 15 months.
- The default taxation balance date of 31 March may not be changed, but part-year first and final tax returns are allowable.

Financial Statements

- From 1 April 2014 only "large"^{*} LPs must prepare GAAP financial statements and these must be audited (and publicly filed) *unless* 95% of the capital contributors to the LP opt out of the audit requirement. These financial statements must be available at the Registered Office within five months of balance date.
- From 1 April 2014 small to medium LPs are required to maintain basic financial records only at their registered office. These must include records of assets and liabilities, day-to-day expenditure

^{*}As at March 2015, "large" is defined as having assets in excess of NZD60 million or total revenue in excess of NZD30 million.

and receipts and sufficient records to allow the assessable income derived by the partners to be ascertained. Bank statements should be sufficient in most cases to comply.

- The general partner of the LP is responsible for ensuring that the financial reportings of the LP are prepared. Where Trident Trust New Zealand is providing general partner services for large LPs we will require that professional accountants are appointed to prepare the financial statements and we will arrange for the audit opt-out resolutions. Where general partner services are provided to small-medium LPs we will require that we be engaged to prepare the more basic financial reporting.
- If no audit is opted for no public filing is required for either GAAP financial statements or informal financial reporting.

Taxation

- Where no New Zealand sourced income is earned a nil return must be filed. For administrative ease Trident Trust New Zealand takes responsibility for this New Zealand filing obligation.
- LPs are deemed to be transparent for tax purposes. Accordingly, in determining the assessable income of a partnership, the New Zealand revenue authorities will look to the activities of the underlying partners.
- The income, tax credits, rebates, gains, expenditures and losses attributable to individual partners as a result of their participation in the partnership will be calculated with reference to their share of the partnership.
- Losses may be attributed to partners irrespective of whether or not the partner in question was a member of the partnership at the time the loss was incurred.

Offices

The Americas/Caribbean

Bahamas

Trident Corporate Services
(Bahamas) Ltd
T: +1 242 322 6154
bahamas@tridenttrust.com

Barbados

Trident Corporate Services
(Barbados) Ltd
T: +1 246 621 0760
barbados@tridenttrust.com

British Virgin Islands

Trident Trust Company (BVI) Ltd
T: +1 284 494 2434
bvi@tridenttrust.com

Cayman Islands

Trident Trust Company
(Cayman) Ltd
T: +1 345 949 0880
cayman@tridenttrust.com

Nevis

Morning Star Holdings Ltd
T: +1 869 469 1817
nevis@tridenttrust.com

Meridian Trust Company Ltd

T: +1 869 469 1333
nevis@tridenttrust.com

Panama

Trident Trust (Panama) S.A.
T: +507 302 7494
panama@tridenttrust.com

United States

Atlanta

Trident Corporate Services, Inc
T: +1 404 233 5275
usa@tridenttrust.com

Miami

Trident Fund Services
T: +1 305 405 9006
miami@tridenttrust.com

New York

Trident Corporate Services, Inc
T: +1 212 840 8280
nyc@tridenttrust.com

Sioux Falls

Trident Trust Company
(South Dakota) Inc
T: +1 605 679 4355
sd@tridenttrust.com

US Virgin Islands

Trident Trust Company (VI) Ltd
T: +1 340 774 7322
usvi@tridenttrust.com

Asia

Hong Kong

Trident Corporate Services (Asia) Ltd
& Trident Trust Company (HK) Ltd
T: +852 2805 2000
hongkong@tridenttrust.com

New Zealand

Trident Trust Company (NZ) Ltd
T: +64 9 300 6067
nz@tridenttrust.com

Singapore

Trident Corporate Services
(Singapore) Pte Ltd &
Trident Trust Company
(Singapore) Pte Ltd
T: +65 6653 1800
singapore@tridenttrust.com

EMEA

Cyprus

Trident Trust Company (Cyprus) Ltd
T: +357 258 20 650
cyprus@tridenttrust.com

Trident Fiduciaries (Middle East) Ltd

T: +357 253 53 520
fiduciariesme@tridenttrust.com

Dubai

Trident Trust Company (UAE) Ltd
DMCC Branch
T: +971 4 423 9988
dubai@tridenttrust.com

Guernsey

Trident Trust Company
(Guernsey) Ltd
T: +44 1481 727571
guernsey@tridenttrust.com

Isle of Man

Trident Trust Company (IOM) Ltd
T: +44 1624 646700
iom@tridenttrust.com

Jersey

Trident Trust Company Ltd
T: +44 1534 733401
jersey@tridenttrust.com

Luxembourg

Trident Trust Company
(Luxembourg) S.A.
T: +352 26 30 28 48
luxembourg@tridenttrust.com

Malta

Trident Corporate Services
(Malta) Limited &
Trident Trust Company (Malta) Ltd
T: +356 21 434 525
malta@tridenttrust.com

Mauritius

Trident Trust Company
(Mauritius) Ltd
T: +230 210 9770
mauritius@tridenttrust.com

Seychelles

Trident Trust Company
(Seychelles) Ltd
T: +248 4 422 000
seychelles@tridenttrust.com

Switzerland

Trident Corporate Services AG
T: +41 44 396 1080
switzerland@tridenttrust.com

United Kingdom

Trident Trust Company (UK) Ltd
T: +44 20 7935 1503
uk@tridenttrust.com

Trident Company

Services (UK) Ltd
T: +44 20 7487 0460
corpserVICES@tridenttrust.com