

GUERNSEY STATUTORY INSTRUMENT

2021 No.

**The Limited Partnerships (Guernsey)
(Striking Off) Regulations, 2021**

<i>Made</i>	25 th June, 2021
<i>Coming into operation</i>	30 th June, 2021
<i>Laid before the States</i>	, 2021

THE COMMITTEE FOR ECONOMIC DEVELOPMENT, in exercise of the powers conferred on it by sections 43 and 44 of the Limited Partnerships (Guernsey) Law, 1995^a, and all other powers enabling it in that behalf, and after consultation with the Guernsey Financial Services Commission, hereby makes the following Regulations:-

Amendment of the Law.

1. After section 32 of the Limited Partnerships (Guernsey) Law, 1995 insert the following Part –

“PART IVA
STRIKING OFF OF LIMITED PARTNERSHIPS

^a Order in Council No. XII of 1995 (Ordres en Conseil Vol. XXXVI, p. 264); there are amendments not relevant to these regulations.

Striking defaulting limited partnership off the Register.

32A. (1) This section applies where the Greffier has received notice from the Director of the Revenue Service under regulation 13, 14 or 15 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2021 (penalties where substance requirements not met – first, third or fourth accounting period of default) in relation to a limited partnership which has legal personality pursuant to section 9A of this Law.

(2) Where this section applies in relation to a limited partnership, the Greffier may give notice stating that, at the expiration of a period of two months beginning with the date of the notice, the limited partnership will be struck off the Register and the limited partnership will be dissolved, unless cause is previously shown to the contrary.

(3) A notice given under subsection (2) shall be published in such manner and for such period as the Greffier thinks fit.

(4) A notice given under subsection (2) shall be sent, by recorded delivery service or in such other manner as may be determined by the Greffier, to the limited partnership at its registered office and the Greffier may, if he or she thinks fit, send it to any officer, servant or general partner of the limited partnership.

(5) At the expiration of the period mentioned in subsection (2) the Greffier shall, unless cause to the contrary has been shown, strike the limited partnership off the Register and, upon such striking off, the limited partnership shall be dissolved.

(6) The Greffier shall publish notice of the striking off in such manner and for such period as the Greffier thinks fit, and such notice may include the names of the partners of the limited partnership struck off.

(7) Where this section applies in relation to a limited partnership, the limited partnership shall not be considered to have shown cause to the contrary within the meaning of this section unless the Greffier is satisfied, after consultation with the Director of the Revenue Service, that the limited partnership would, if not struck off, comply with the substance requirements applicable to it by virtue of the Income Tax (Substance Requirements) (Implementation) Regulations, 2021, but this is without prejudice to the application of section 32B (limited partnerships party to proceedings).

Limited partnerships party to proceedings.

32B. If it is shown to the Greffier that a limited partnership is party to proceedings, this is cause to the contrary within the meaning of section 32A(5), and accordingly the Greffier shall not strike the limited partnership off.

No prejudice to liabilities or powers of Royal Court.

32C. Notwithstanding the striking off of a limited partnership pursuant to the provisions of this Part –

- (a) the liability, if any, of every officer and partner of the limited partnership continues and may be enforced accordingly, and

- (b) the power of the Royal Court to make an order in relation to the dissolution of the limited partnership is not affected.

Property of struck off limited partnership.

32D. Where a limited partnership is dissolved under the provisions of this Part, all property and rights then vested in it or held on trust for it (but not property held by it on trust for another person) shall, unless Her Majesty's Receiver-General directs otherwise, become bona vacantia belonging to the Crown.

Application for restoration to the Register.

- 32E. (1) The following persons –
- (a) a limited partnership which has been struck off under this Part,
 - (b) any partner or creditor thereof,
 - (c) any liquidator thereof,
 - (d) the Commission, or
 - (e) any other person appearing to the Royal Court to have a sufficient interest in making the application,

may, subject to the provisions of this section, apply to the Royal Court for an order restoring the limited partnership to the Register.

(2) An application under this section must be made before the expiry of 10 years beginning on the date on which the limited partnership was struck off.

(3) Notice of an application under this section shall be served on –

- (a) the Greffier,
- (b) the Commission,
- (c) Her Majesty's Procureur,
- (d) Her Majesty's Receiver-General,
- (e) the Director of the Revenue Service in respect of a limited partnership struck off pursuant to notice from the Director of the Revenue Service under regulation 13, 14 or 15 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2021 (penalties where substance requirements not met – first, third or fourth accounting period of default), and

- (f) any liquidator of the limited partnership (except where the liquidator is the applicant).

(4) The Greffier shall publish notice of the application in such manner and for such period as the Greffier thinks fit.

Restoration to the Register.

32F. (1) Before making an order for the restoration of a limited partnership, the Royal Court shall give an opportunity to make representations to –

- (a) the Greffier,
- (b) the Commission,
- (c) Her Majesty's Procureur and Her Majesty's Receiver-General,
- (d) the Director of the Revenue Service in respect of a limited partnership struck off pursuant to notice from the Director of the Revenue Service under regulation 13, 14 or 15 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2021 (penalties where substance requirements not met – first, third or fourth accounting period of default), and

(e) such other persons, if any, as the Royal Court thinks fit, including (without limitation) –

(i) any partner or creditor of the limited partnership, and

(ii) any liquidator of the limited partnership.

(2) The Royal Court may, if satisfied –

(a) that the limited partnership would, in the case of a limited partnership struck off pursuant to notice from the Director of the Revenue Service under regulation 13, 14 or 15 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2021 (penalties where substance requirements not met – first, third or fourth accounting period of default), if reinstated, comply with the substance requirements applicable to it by virtue of those regulations, or

(b) that it would be just and equitable for the limited partnership to be restored to the Register,

order the limited partnership to be restored to the Register.

(3) In deciding whether or not to restore a limited partnership to the Register, and without prejudice to any other matter it may have regard to, the Royal Court shall have regard to –

- (a) whether or not the limited partnership would be solvent if it is restored, unless the application for restoration is made by a creditor,
- (b) whether the persons who were general partners at the time the limited partnership was struck off consent to being general partners if the limited partnership is restored,
- (c) the circumstances in which the limited partnership was struck off,
- (d) whether there were persistent or gross violations of this Law in respect of the limited partnership,
- (e) whether the limited partnership was used for fraudulent purposes,

- (f) whether restoration to the Register would jeopardise the reputation of the Bailiwick as a financial centre, and
- (g) whether it would be just and equitable to restore the limited partnership to the Register.

(4) The restoration of a limited partnership's name pursuant to an order under this section is, unless the Royal Court otherwise directs, and without prejudice to any other term of the order, conditional upon the payment by the applicant to the Greffier of –

- (a) all sums which would have been payable by the limited partnership if it had not been struck off, and
- (b) such additional amount as may be determined by the Greffier.

(5) The restoration of a limited partnership's name pursuant to an order under this section is, unless the Royal Court otherwise directs, and without prejudice to any other term of the order, conditional upon the payment by the applicant to Her Majesty's Procureur of –

- (a) any costs incurred by Her Majesty's Receiver-General in administering any property belonging to the limited partnership, and

- (b) any costs incurred by Her Majesty's Procureur in connection with the striking off or the application for restoration.

(6) Upon the restoration of the limited partnership's name in accordance with an order under this section, the limited partnership shall be deemed to have continued in existence.

(7) An order under this section may be made on such terms and conditions and may contain such directions and make such provision as the Royal Court thinks fit including, without limitation, terms, conditions, directions and provision for placing the limited partnership and all other persons in the same position as nearly as may be as if the limited partnership had not been struck off.

(8) An order under this section may contain such directions and make such provisions as to costs as the Royal Court thinks fit, including directions –

- (a) requiring any person responsible for the limited partnership being struck off to pay the costs of the application for restoration, and
- (b) requiring any person responsible for the limited partnership being struck off to reimburse the applicant for any payments made under subsection (4) or (5),

notwithstanding that that person is not a party to the application for restoration.

(9) The Greffier may, subject to such terms and conditions as the Greffier thinks fit, restore a struck-off limited partnership to the Register (whether of the Greffier's own motion or at the request of the limited partnership or any partner or creditor thereof) if the Greffier is satisfied that –

- (a) the limited partnership was struck off in error (whether the error was that of the Greffier, the limited partnership or any of its general partners or any other person) or in circumstances in which, under the provisions of this Part, it should not have been struck off or, provided that the Greffier has previously consulted Her Majesty's Procurer, Her Majesty's Receiver-General, the Director of the Revenue Service in the case of a limited partnership struck off pursuant to notice from the Director of the Revenue Service under regulation 13, 14 or 15 of the Income Tax (Substance Requirements) (Implementation) Regulations, 2021 (penalties where substance requirements not met – first, third or fourth accounting

period of default)] and the Commission, if the Greffier is satisfied that –

- (i) all the grounds, circumstances or defaults resulting in the limited partnership's striking off no longer exist or have been remedied, and
 - (ii) any payments specified in subsections (4) and (5) and any other fees, penalties and amounts due under or by virtue of this Law have been paid,
- (b) an application to the Royal Court under section 32E for the restoration of the limited partnership would be successful but is not necessary for the fair disposal of the matter, and
- (c) the restoration of the limited partnership to the Register under this subsection would not prejudice any creditor or third party.

(10) Where the Greffier restores a limited partnership to the Register under subsection (9), and except to the extent that the Greffier directs otherwise, the provisions of this Law apply in respect of the limited

partnership as if it had been restored to the Register pursuant to an order of the Royal Court under this section.

(11) Subsection (9) is without prejudice to the other provisions of this section and the provisions of section 32E.

Property of restored limited partnership.

32G. (1) If a limited partnership's name is restored to the Register before the expiration of six years beginning on the date of its striking off, the limited partnership is entitled, subject to any order of the Royal Court, to have returned to it –

- (a) any property which vested in the Crown upon striking off, or
- (b) if any such property has been disposed of, its value at the time of disposal.

(2) The Royal Court may extend the period of six years set out in subsection (1) if it regards it as just and equitable to do so having regard to the degree of prejudice the limited partnership would otherwise suffer.

Meaning of creditor.

32H. In this Part "creditor" includes a contingent or prospective creditor."

Consequential amendment of the Law.

2. After section 28(1)(g) of the Limited Partnerships (Guernsey) Law, 1995 insert the following paragraph –

“or (h) upon the Greffier striking the limited partnership off the Register under section 32A(5).”.

Citation.

3. These Regulations may be cited as the Limited Partnerships (Guernsey) (Striking Off) Regulations, 2021.

Commencement.

4. These Regulations shall come into force on the 30th June, 2021.

Dated this twenty fifth day of June, 2021



DEPUTY N. INDER

President of the States Committee for Economic Development

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under the Limited Partnerships (Guernsey) Law, 1995, provide for the striking off of any defaulting limited partnership with legal personality which has not met the economic substance requirements applicable to it by virtue of the Income Tax (Substance Requirements) (Implementation) Regulations, 2021.