

Limited partnerships

Over the last 10 years or so limited partnerships have proved a popular vehicle for agricultural and horticultural projects. This article explains what a limited partnership is in simple terms, how they are established and when they are most commonly used.

What is a limited partnership?

Limited partnerships are separate legal entities governed by the Limited Partnerships Act 2008 (**Act**).

A limited partnership:

- has one or more general partners who are responsible for managing the partnership business;
- has one or more limited partners who do not participate in managing the business, do not enter into contracts on behalf of the partnership and whose name is not used in connection with the business;
- must carry on business in the name of the general partner(s) only and must include the words "limited partnership" or "LP" at the end of the partnership name to recognise the existence of limited partners; and
- is created when the limited partnership is registered. The written partnership agreement does not have to be filed. In order to be registered, however, the partners certify that a written partnership agreement has been entered into.

The liability of a limited partner is limited to their capital contributions to the partnership. As long as the Act is complied with and the limited partner takes no

management in the partnership, the limited partner will have no personal liability.

A limited partnership differs from a limited liability company in that the limited partners have a direct legal interest in the partnership assets, rather than shares in a company. They are also entitled to a share in the profits or losses of the limited partnership, rather than receiving dividends dependant on the decision of a board.

Despite being a separate legal entity, for tax purposes, the partners account for tax in accordance with their personal position, similar to a traditional partnership.

What is involved in establishing a limited partnership

As noted, a limited partnership is made up of a general partner and a limited partner(s). The general partner is typically a company because it has limited liability. Ordinarily, a general partner will be an incorporated company owned by the limited partners in proportion to their shares in the limited partnership with representatives of the limited partnership appointed directors or a person who has particular skills in the management of the limited partnerships business whether that be an orchard, vineyard or dairy farm.

The constitution of the general partner (assuming it is a company) will reflect the provisions of the Act and requirements of the limited partnership.

A partnership agreement is prepared between the general partner and limited partners. This will reflect the special provisions of the Act and record each limited partner's capital contribution.

The limited partners may be individuals, partnerships, companies or trusts.

Once the partnership agreement is finalised an application is made to incorporate the partnership as a limited partnership. On incorporation, a certificate of incorporation is issued for the limited partnership. This

Limited Partnerships (Continued)

is separate from the certificate previously issued for the general partner if it is an incorporated company.

When and why limited partnerships are used in agribusiness

Limited partnerships are typically used in development projects that have an element of risk and are capital intensive, requiring a number of partners coming together to fund the project through equity and debt and consequently share the risk.

The project often requires development over time where there is significant capital expenditure prior to the project becoming cash positive. The limited partnership structure allows for the limitation of liability like a company, but unlike a company, allows the streaming of losses to limited partners during the development phase.

Typically, developments have included dairy conversion, cherry or apple orchard developments and vineyard developments.

Losses are capped at the value of the limited partners' capital investment which includes equity and their proportionate share of debt e.g. if they invest \$500,000 and are severally liable as guarantor to the bank for \$1,000,000 of bank debt, then they can stream losses over the development stages of \$1,500,000 to offset profits in their hands from other business interests.

Drawbacks of limited partnerships

While the advantages of limited liability and the tax advantages of a partnership are attractive, limited partnerships are relatively complex structures compared to a simple company or partnership. There is more cost in setting them up and the relationship between the general partner and limited partners is not easily understood.

Like a simple partnership, there is a practical limit to how many limited partners you can have, as the entry and exit mechanisms can be cumbersome compared to

a company. However, they are well suited for between three to fifteen arms-length partners.

Final Comments

It is important to get specialist accounting and legal advice in relation to limited partnerships and our comments above in relation to tax advantages are generalised. Each limited partnership will have particular requirements.

Want to know more?

If you have any questions about limited partnerships, please contact our specialist [commercial team](#) or [David Goodman](#).