

Industry Comments –Proposed Investment Limited Partnerships Law April 2014

Industry Comments	Ref.	
General Comments:		
A licensee: Whilst the obligations of each of the limited and general partner are presented, it is not clear what the consequences will be on defaulting limited partners. It is assumed that the Investment Limited Partnership Agreement will need to specify such details and that it could vary among different agreements.	A	Yes, the Partnership Agreement should address these issues and the Civil Code address the issues related to breach of contract in general. Hence, there is no need to introduce any amendments to the draft in response to this comment.
A licensee: The proposed law is silent on the tenor of such partnership and who has got the power to extend it, if any.	B	The period of the partnership is a matter to be stipulated in the Partnership Agreement. The period could be limited or for a fixed duration as indicated under Article 4(1)(d) and 5(5)(h). Hence, there is no need to introduce any amendments to the draft in response to this comment.
A licensee: Will the Investment Limited Partnership structure affect the current Collective Investment Undertaking laws and guidelines? In our view, the current CIU law structure applied in Bahrain should remain as it has proven that it is a solid structure for regional as well as international deals. As such the structure has attracted numerous regional institutions which hubbed their funds in Bahrain.	C	This law does not replace the current structure for CIUs. It provides for an additional legal form to be used to establish CIUs, and is expected to be more attractive to CIUs investing in alternative asset classes.
A licensee: It is expected that established General Partners will have similar roles to Category 1 and 2 Investment companies. Is this understanding correct, and if so will there be an overlap and impact on the investment companies licensing laws and operations?	D	Categories 1 and 2 investment business licensees can act as general partners of investment limited partnerships, without the need to establish another licensed entity. CBB licensed banks will also be able to act as general partners.
A licensee: It is not clear what the minimum capital of General Partners will be. This is an important point that needs to be raised as General Partners usually work as investment companies and thus will attain management, infrastructure	E	The requirements which a GP should satisfy will be addressed in the regulation to be issued by CBB pursuant to this law.

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<p>requirements such as IT systems, offices etc. Although all such costs will be compensated by the Investment Limited Partnership structure through fees charged, it is important to clarify what minimum level of capital is expected to set up such General Partners.</p>		
<p>A licensee: In terms of acting as placement agents, we understand that sometimes limitations are imposed on investment companies specifically Category 2 companies. How will this be reflected with General Partners i.e. will they have the right to act as placement agents in this case or will they be appointing third party licensed placement agents?</p>	F	<p>Category 2 Investment business licensees are permitted to act as placement agents for financial products, including investment limited partnerships. They are also eligible to act as general partners of investment limited partnerships.</p>
<p>A licensee: we recommend that the law include a specific Article on the dispute resolution and arbitration process that is essential to safeguard the interests of the GP, LP, fund manager, and other stakeholders.</p>	G	<p>This is a matter to be addressed by the concerned parties in their respective contracts. Hence, there is no need to introduce any amendments to the draft in response to this comment.</p>
<p>A licensee: Rule ARR-B.1.8 of Volume 7 (Collective Investment Undertakings) of the Rulebook, provides that the fund may be established under (i) Law of Contract (ii) Financial Trust Law, or (iii) Bahrain commercial Companies Law. It may be better to apply the Rule to allow formation of investment vehicle in the form of Limited Partnership (Simple Commandite) under the current Commercial Companies Law subject to implementing regulations issued by the CBB.</p>	H	<p>Limited partnerships provided for in the Commercial Companies law does not serve the purpose. There are many restrictions in the law that makes such company form not attractive to institutions wishing to structure financial products.</p>
<p>A licensee: What the legal form of the “Partnership”, will it similar like the forms prescribed in Commercial Companies Law No.21/2001 which defines restricted form for any registered in Bahrain (SPC, WLL, BSC (c) ,BSC..Etc.) , will the regulation to be issued by the CBB specific format including the minimum terms and conditions to be incorporate into the Agreements and incorporation agreements.</p>	I	<p>The proposed law is adequately clear. The proposed law does not subject an LP to the Company Law. An LP is a distinct creature There is no need to introduce any amendment to the draft to address this query.</p>

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Proposed Rule	Comments		
<p><i>Reference laws:</i></p> <p><i>And Law No. (57) of 2009 with respect to Bahrain Stock Exchange,</i></p>	<p>A licensee: to be replaced by Law no. 60 for the year 2010 with respect to Bahrain Bourse.</p>	J	<p>What is referred to as Law No. 60 of 2010 is in fact not a law but a Decree. Decrees should not be referred to in a law (as they are inferior to a “law” unless the Decree is a Legislative Decree”). However. Decree No. 60 of 2010 does not replace Law No. 57 of 2009 (which it cannot possibly do because it is a Decree and a Decree cannot replace a law).</p>
<p><i>Article 1:</i></p>	<p>A licensee: New Definition term titled “Partner” is suggested to be added to give a clarified definition to the terms Partner, general partners, and Limited Partner.</p> <p>A licensee: consider including definitions of general and limited partners.</p>	K L	<p>For clarity, a definition for “Partner” will be added.</p> <p>For clarity, a definition for “General Partner” and “Limited Partner” will be added.</p>
<p><i>Article 1:</i></p> <p><i>Contribution means cash or property which a partner contributes or agrees to contribute to the capital of an Investment Limited Partnership;</i></p>	<p>A licensee: In the section titled “Contribution”, suggest adding the term “in-Kind” to definition of the term “contribution” to be as follows: “Contribution” means any cash or in-kind (whether movable or immovable property) which a partner contributes or agrees to contribute to the capital of an Investment Limited Partnership.</p>	M	<p>The term “in kind” is similar to “Property” which is used in the draft. The term “in kind” is more of an accounting term and is generally not used in laws. Property is defined under both the Civil Code as either movable or immovable. Hence, there is no need to introduce any amendment to the draft in response to this comment.</p> <p>As to the other point raised, the term “cash” is clear enough and there are adequate provisions in the draft to address the return of contribution. Hence,</p>

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	<p>From legal view, a distinction should be made between the definition of the term “cash” which contributed by any Partner whether will be defined as a “Deposit” or “Invested Amount” to avoid any ambiguity about the term as a Partner may conceive the contributed Cash as deposit and he has the right to withdraw the same at any time prior the expiry of the agreed investment terms or quit of the Investment.</p> <p>The Financial institutions are expected to have the right to make restrictions on withdrawal prior the expiry of the investment in accordance with the terms and conditions of the Agreement to be entered with the Partner/ Investor.</p>		<p>there is no need to introduce any amendment to address this comment.</p>
<p><i>Article 1:</i> <i>Insolvent: means with respect to an Investment Limited Partnership, an Investment Limited Partnership is insolvent at a particular time if:</i> <i>(a) the Investment Limited Partnership is unable to pay the debts and obligations of the Investment Limited Partnership (other than liabilities to partners on account of their Partnership Interests) in the ordinary</i></p>	<p>A licensee: The definition term “Insolvent” is drafted to be consistent with the event of insolvency provided for in the Bankruptcy and Composition Law No .11/1987, however, it prudent to be compatible with the Commercial Companies law No 21/2001 as well to include any event of insolvency of the</p>	<p>N</p>	<p>The term “Insolvent” is used in the law in connection with the insolvency of the partnership and has nothing to do with the insolvency of the corporate partner. Bankruptcy of the corporate partner is dealt with under the dissolution provisions.</p> <p>As to Article 133 of the CBB law, this Article is applicable to Licensees whilst a Partnership is not a Licensee. Hence, there is no need to introduce any</p>

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<p><i>course of business as they fall due out of the assets of the Investment Limited Partnership; or (b) the value of the Investment Limited Partnership assets is less than the value of its liabilities;</i></p>	<p>corporate Partner. Further, what the legal effect, if the General Partner (s) (if is Corporate body and Licensee) becomes insolvent under Article (133) Insolvency of a Licensee of CBB law which provides (“A Licensee is deemed to be insolvent if his financial position becomes unstable and he stops paying his due debts other than administrative fines and whatever type of tax.”) or under the Commercial Companies Law.</p>		<p>amendment to the draft in response to this comment.</p>
<p><i>Article 3 – Definition of an Investment Limited Partnership</i></p> <p><i>4- An Investment Limited Partnership shall consist of:</i></p> <p><i>(a) one or more general partners who shall be liable for all the partnership’s obligations and debts in all his fortune. Where the partnership is made up of more than one general partner, their liability shall be joint and several; and</i></p> <p><i>(b) one or more limited partners who have contributed capital in, or provided capital commitments to, the partnership either in cash or property. Except as otherwise</i></p>	<p>A licensee: consider adding a sentence to clearly indicate that the limited partner will have no involvement in the day to day running of the partnership.</p>	<p>O</p>	<p>Article 8 contains comprehensive provisions on the extent of the permissible involvement of the Limited Partner and it is clear enough on the prohibition of the Limited Partner from involvement in the day to day running of the partnership. Hence, there is no need to introduce any amendment to the draft in response to this comment.</p>

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<p><i>provided in this law, limited partners shall not be liable for the partnership's obligations and debts beyond the amount each has contributed or committed to contribute.</i></p>			
<p><i>Article 3 – Definition of an Investment Limited Partnership</i></p> <p><i>5- The general partners and limited partners may each be either a natural person or body corporate and need not be a citizen of or resident, domiciled or incorporated in Bahrain. Notwithstanding the foregoing, each Investment Limited Partnership must have at least one general partner which is a body corporate and is domiciled in Bahrain or in a jurisdiction acceptable to the Central</i></p>	<p>A licensee: the two sentences seem to contradict each other both in terms of the legal form and domicile.</p> <p>A licensee: It would seem unusual for a general partner to be a natural person.</p>	<p>P</p> <p>Q</p>	<p>There is no contradiction between the two sentences. It is true that a General Partner can be a natural or a body corporate except that at least one of the General Partners must be a body corporate.</p> <p>With regards to the domicile, the first sentence states that LPs and GPs can be domiciled anywhere. The second sentence reiterates that the GP can be domiciled in Bahrain or outside Bahrain, but since this partner will be undertaking the regulated activity of managing financial instruments, CBB has to be satisfied that the GP is established in an acceptable jurisdiction in terms of regulatory environment.</p> <p>Hence, there is no need to introduce any amendment to the draft in response to this comment.</p> <p>True, it would be unusual for a General Partner to be a natural person, and for that particular reason, at least one GP should be a corporate (the regulated entity structuring the fund). A natural person may be also appointed as a GP, in addition to the corporate partner, given that there is logic for his/her</p>

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			<p>appointment, like specific asset management knowledge needed to run the affairs of the partnership.</p> <p>Hence, there is no need to introduce any amendment to the draft in response to this comment. Agree,</p>
<p><i>Article 4 – Registration of an Investment Limited Partnership</i></p> <p><i>1- The registration of an Investment Limited Partnership shall be effected by filing with the Commercial Registry a confirmation letter from the Central Bank that it has no objection to the incorporation of the Investment Limited Partnership and a notarized statement, along with the fee prescribed pursuant to the Commercial Register Law, signed by all general partners containing:</i></p> <p><i>(c) the address of the registered office of the Investment Limited Partnership</i></p>	<p>A licensee: CBB may wish to clarify whether the registered office of the LP should be in Bahrain?</p>	R	<p>Although it is not necessary to state in the law that the LP’s registered office must be in Bahrain but there is no harm in making this clear. The draft will be amended to state that the registered office of the partnership must be in Bahrain.</p>
<p><i>Article 5 – Investment Limited Partnership Agreement</i></p>	<p>A licensee: Apart from the matters mentioned, the nature of business or the fund strategy that will be pursued need to be specified.</p>	S	<p>There is no restriction in the draft on what could be included in the Partnership Agreement and hence it is up to the parties to include in it the nature of the business and strategy of the partnership. However, an additional paragraph will be added requiring the Partnership Agreement to include the particulars</p>

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			<p>which should be in the statement to be filed with the Commercial Registry listed under Article 4(1) of the draft(which includes the particulars of the LP’s business)</p>
<p><i>Article 5 – Investment Limited Partnership Agreement</i></p> <p><i>4- The Investment Limited Partnership Agreement shall be a private agreement between the partners and shall be filed only with the Central Bank by the Investment Limited Partnership prior to the commencement of its operations and not later than the time which may be prescribed in a regulation to be issued by the Central Bank pursuant to this law. Any amendment to the Investment Limited Partnership Agreement shall be filed with the Central Bank not later than five (5) business days after it had been concluded by the Parties.</i></p>	<p>A licensee: Pursuant to Clause (4) of the proposed Law, the Investment Limited Partnership Agreement (ILPA) shall be a private agreement between the partners and shall be filed with the CBB prior to the commencement of operation. Accordingly the ILP’s Partners (whether General or Limited) have the sole discretion to agree on terms and conditions they thought fit, the regulation to be issued by CBB according to the Law will clarify whether: a) the issuance of the confirmation letter to the Partners from the CBB confirming No objection on incorporation of the Investment in accordance with Clause (1) of the Law will empower the partners to proceed with registration before the Commercial Registry, or will a pre-quest to registration similar to process of ratification of the agreement incorporation for the Licensee under the Commercial Companies Law; and b) the CBB</p>	<p>T</p>	<p>If a licensee is proposing to establish a product, the structure and particulars of the product will need to be submitted to CBB “prior” to establishment. After receiving the CBB’s approval, registration, or authorization (depending on the case), the licensee may then incorporate the investment limited partnership. Please refer to Article 4.1, requiring a confirmation letter from the CBB that it has no objection to the incorporation of the investment limited partnership to be filed with the Commercial registry in order to register the partnership.</p>

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	has the right to amend or ratify the ILP’s Agreement or just the lodgment of the said agreement by the Partners will make the agreement valid and enforceable and completion of the registration will be subject to the approval of the CBB’s approval		
<i>Article 7 – Name of an Investment Limited Partnership 3- The name of the Investment Limited Partnership may include the name of any general partner or limited partner.</i>	A licensee: normally name of a limited partner who is an individual or a corporate name should not be included in the name of the limited partnership unless (a) it is also the surname of one of the general partners, (b) it is the corporate name or a significant part of the corporate name of one of the general partners, or (c) the limited partnership has been carried on under that name before the admission of the relevant limited partner. Otherwise, the limited partner will be liable as a general partner in the partnership to any creditor of the limited partnership who has extended credit to the limited partnership without actually knowing that the limited partner is not a general partner.	U	The Article will be amended to state that the name of an investment limited partnership may NOT include the name of a limited partner.
<i>Article 8</i>	A licensee: this article has a	V	There is no need to address this in the law as it is a

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<p><i>2. The general partners may, in accordance with the terms of the Investment Limited Partnership Agreement, confer such management authority on one or more persons who are not partners by way of a separate contract. Such persons will undertake management functions on behalf of the general partners in accordance with the terms of that contract.</i></p>	<p>passing reference to fund managers; however, there is no specific reference to the fund manager who may be appointed by the GPs to manage the partnership. It is our suggestion that the role of the fund managers be made explicit.</p>		<p>matter to be provided for in the contract between the Partnership/GP and the Fund Manager as they may wish and agree.</p> <p>In addition, Volume 7 of CBB Rulebook concerning Collective Investment Undertakings sets the minimum duties of a fund manager, which must be considered when drafting the fund management agreement.</p>
<p><i>Article 8 – Management of an Investment Limited Partnership</i></p> <p><i>3- Subject to paragraphs (4) and (5) of this Article:</i></p> <p><i>(a) the acts of a general partners, performed in the usual course of business of the Investment Limited Partnership bind the Investment Limited Partnership; and</i></p> <p><i>(b) any debt or obligation incurred by a general partner in the conduct of the activities of an Investment Limited Partnership shall be a debt or obligation of the Investment Limited Partnership.</i></p>	<p>A licensee: this seems to contradict with Article 3.4a.</p>	<p>W</p>	<p>There is no contradiction between the two articles.</p>
<p><i>Article 8 – Management of an Investment Limited Partnership</i></p> <p><i>6- Unless the Investment Limited Partnership</i></p>	<p>A licensee: Article 8.6 (B) states that the Limited Partner (along with General Partner) shall have say in the making of a distribution.</p>	<p>X</p>	<p>Even if this may amount to an act of management, it is still permissible under Article 8(9)(d) by virtue of which a partner is not deemed to be participating in the management by exercising any right conferred</p>

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<p><i>Agreement provides otherwise, the following matters shall require the unanimous agreement of all general and limited partners:</i></p> <p><i>(a) amendment of the Investment Limited Partnership Agreement;</i></p> <p><i>(b) the making of a Distribution; and</i></p> <p><i>(c) a decision to dissolve or liquidate the Investment Limited Partnership, to sell substantially all of its assets, or to change any restrictions on its business.</i></p>	<p>We feel that the Article 8-point 6 (B) contradicts with Article 8-point 7; considering that an ‘act of distribution’ is also ‘an act that can be described as part of the management of the partnership’.</p>		<p>by this law. Hence, there is no need to introduce any amendment to the draft in response to this comment.</p>
<p><i>Article 8 – Management of an Investment Limited Partnership</i></p> <p><i>8- If a limited partner takes part in the management of the Investment Limited Partnership in its dealings with persons who are not partners, that limited partner shall be liable, in the event of the insolvency of the Investment Limited Partnership, for all debts and obligations of that Investment Limited Partnership incurred during the period that he so participates in the management of the Investment Limited Partnership as though he were, for such period, a general partner, provided always that he shall be rendered liable pursuant to the foregoing provision only to a person who transacts business with the Investment Limited Partnership during</i></p>	<p>A licensee: a general partner with actual knowledge of a limited partner’s participation in the management of the limited partnership should result in both the limited partner and the general partner being jointly and severally liable under the proposed law.</p> <p>A licensee: this is too long and vague. Suggest this is suitably modified to convey the intended meaning more clearly.</p>	<p>Y</p> <p>Z</p>	<p>Yes, this would result in the Limited Partner being jointly and severally liable with the general partners. The wording clearly states “as though he (i.e. the limited partner) were for such period a general partner”. As, Article 3(4)(a) states that the general partners are jointly and severally liable, the Limited Partner if he is held to have acted as a general partner would be jointly and severally liable with the other general partners. Hence, there is no need to introduce any amendment to the draft in response to this comment.</p> <p>The provision is not vague, but the suggestion to make the Article shorter will be considered.</p>

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<p><i>such period with actual knowledge of such participation and who then reasonably believed such limited partner to be a general partner.</i></p>			
<p><i>Article 8.9:</i> <i>A limited partner does not take part in or participate in the management of the Investment Limited Partnership within the meaning of this Article 8 by:</i> <i>(a) holding an office or interest in, or entering into contracts with the general partner;</i></p>	<p>A licensee: the term “contract” should be defined to provide legal certainty to the types of contractual arrangements which are envisaged to be covered by this provision.</p>	<p>AA</p>	<p>It is not intended to restrict the type of contracts the subject of this provision. Hence, there is no need to introduce any amendment to the draft in response to this comment.</p>
<p><i>Article 8.9:</i> <i>A limited partner does not take part in or participate in the management of the Investment Limited Partnership within the meaning of this Article 8 by:</i> <i>(c) consulting with and advising a general partner or consenting or withholding consent to any action proposed in the manner contemplated by the Investment Limited Partnership Agreement with respect to the business of the Investment Limited Partnership including, without limitation, the</i></p>	<p>A licensee: the term “business” should be defined to provide legal certainty as to what types of businesses are envisaged to be covered by this provision.</p>	<p>AB</p>	<p>There is no need to define the term “business” as it could be any business and hence no need for certainty. Hence, there is no need to introduce any amendment to the draft in response to this comment.</p>

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<p><i>consideration, approval or withholding of approval of any conflicts of interest associated with the Investment Limited Partnership;</i></p>			
<p><i>Article 8.9: A limited partner does not take part in or participate in the management of the Investment Limited Partnership within the meaning of this Article 8 by: (f) approving or disapproving an amendment to the Investment Limited Partnership Agreement</i></p>	<p>A licensee: this seems to contradict with Article 8.6a.</p>	<p>AC</p>	<p>There is no contradiction between the two articles.</p>
<p><i>Article 10.1 Save as may otherwise be authorized by the Investment Limited Partnership Agreement or pursuant to paragraph (5) of this Article, a general partner shall: d. refrain from carrying on any business of the same nature as or competing with the Investment Limited Partnership. If a partner carries on any business of the same nature as or competing with the Investment Limited Partnership, he shall account for and pay over to the Investment Limited Partnership all profits made by him in that business</i></p>	<p>A licensee: we suggest that this clause be removed. For institutional investors, GPs may be in the same line of business as LPs. So long as there are adequate controls, corporate guidance, disclosure procedures in place, then this should be permitted. A licensee: for clarity, the second sentence should include the word “general” before partner.</p>	<p>AD AE</p>	<p>The provision does not restrict the parties as it clearly says it will be applicable unless otherwise authorized in the Partnership’s Agreement. Hence, there is no need to introduce any amendment to the draft in response to this comment. Agree, draft will be amended accordingly.</p>

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<p><i>Article 12 – Liabilities of New and Outgoing Partners</i></p>	<p>A licensee: we suggest that clauses relating to the admission of new partners should be discussed in more details.</p>	<p>AF</p>	<p>This law will be followed by regulations to be issued by the CBB in which this matter will be addressed</p>
<p><i>Article 12 – Liabilities of New and Outgoing Partners</i></p> <p><i>4- Notwithstanding the provisions of any other law, a claim against an outgoing general partner shall be subject to prescription after five years commencing from:</i></p> <p><i>(a) Subject to Sub-Paragraph 4(b) of this Article, the date on which the partner’s withdrawal or removal was announced in the Official Gazette; or</i></p> <p><i>(b) Where the debt was incurred before the announcement of the general partner’s withdrawal or removal in the Official Gazette but became payable after the date of such announcement, the date on which the debt had become payable.</i></p>	<p>A licensee: additional clarification should be included here to confirm that save for instances of fraud, any action against a partner must be initiated within five years of the partner’s exit.</p>	<p>AG</p>	<p>“Save in cases of fraud” will be added as suggested.</p>
<p><i>Article 13 – Proceedings by or against an Investment Limited Partnership</i></p> <p><i>3. Any partner may institute legal proceedings against the Investment Limited Partnership on the ground that the affairs of</i></p>	<p>A licensee: clarification should be included to confirm that the limited partnership shall only be required to respond to any proceeding initiated under these provisions by the order of court</p>	<p>AH</p>	<p>Under Bahraini Law a defendant would have to defend any case that is filed against him. However, pursuant to Article 198 of the Civil and Procedural Law the court may award defendant damages if the case against him was vexatious.</p>

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<p><i>the Investment Limited Partnership are being or have been conducted in a manner which is unfairly prejudicial to the interests of one or more of the partners (including at least himself) or that any actual or proposed act or omission by the Investment Limited Partnership (including an act or omission on its behalf) is or would be so prejudicial.</i></p> <p><i>4. A limited partner may bring action on behalf of an Investment Limited Partnership provided that such partner had first served written notice on the Investment Limited Partnership and all the general partners requiring them to institute legal proceedings within a reasonable time and they have all, without good cause, refused to do so.</i></p>	<p>and after a court determines the merits of any such proposed proceedings that the limited partnership has a case to answer. The court shall amongst other have the power to decline frivolous and vexatious proceedings brought under these provisions. Additionally, this first stage process shall be entirely at the cost of the party bringing proceedings.</p> <p>A licensee: The term “reasonable time” provided for in Article 13.4 of the Law may entail ambiguity and it preferable to be specific (e.g 90 days)after the lapse of this period the Limited partner has the right to proceed with instituting legal proceedings, the Partnership and the general Partner refuse to do without justifiable cause.</p>	<p>AI</p>	<p>All partnership laws that were used for reference do not have any time restriction and none of them has even “reasonable time”. It was envisaged that it would be useful to allow the action only after the elapse of a “reasonable time” although no other jurisdiction has it. Although it is possible to state a time (say 14 days) such time may be too short or too long depending on the situation and on the exact response that the Limited Partner receives when he approaches the Partnership. It is not believed that a time limit should be included in line with all Partnership Laws.</p>
<p><i>Article 13 – Proceedings by or against an Investment Limited Partnership</i></p>	<p>A licensee: this article mentions that if the partnership is rendered an action against it by the court</p>	<p>AJ</p>	<p>This comment is not valid as the General Partner’s liability the subject of this paragraph is in respect of a debt of the partnership as referred to under</p>

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<p>6. Any general partner liable under paragraph (5) of this Article shall have the right to recover all sums paid under a court judgment executed against the Investment Limited Partnership from the Investment Limited Partnership.</p>	<p>and the property of a general partner is subject to execution, the general partner shall have the right to recover all sums paid under the court judgment from the investment limited partnership. This would make the contribution of the limited partners also subject to the liabilities, which is in contradiction to the rights of the limited partners.</p>		<p>paragraph (5) of the same Article. Hence, there is no need to introduce any amendment to the draft in response to this comment.</p>
<p>Article 14.2: Unless provided otherwise in the Investment Limited Partnership Agreement, any payment of a share of profit to partners shall be made to all general and limited partners pro rata to their respective proportions of the total Contributions of all partners paid into the Investment Limited Partnership which have not been returned at the time the payment of profit is decided upon.</p>	<p>A licensee: the current paper states that the distribution of a share of profit amongst the GP/LP is permitted pro rata to the respective proportions of the total contributions of partners (GPs and LPs). We notice that this contradicts generally accepted industry practice. The carried interest (which is basically any income above a specific hurdle rate) is distributed at a non-pro rata basis (for example, a standard rule is 20% / 80% to GP and LP respectively; this is independent of the contribution of the GP.</p>	<p>AK</p>	<p>The provision being referred to is not mandatory as it would be applicable only where the Partnership Agreement does not include a different provision. Hence, it is for the parties to include in the Partnership Agreement whatever they like (or believe conforms to generally accepted industry practice). There is no need to introduce any amendment to the draft in response to this comment.</p>
<p>Article 17 – Dissolution 3. Upon the occurrence of any of the events specified under paragraph (2)(a) of this</p>	<p>A licensee: clarification should be included to confirm that the limited partnership shall only be required to response to any</p>	<p>AL</p>	<p>This comment is not relevant to this Article. It is in fact a duplication of the comment on Article 13(4) which has been addressed above.</p>

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<p><i>Article if the partners elect, where permissible under Investment Limited Partnership Agreement, at least one new general partner which is a body corporate within ninety (90) days of the date specified under paragraph (2)(a) of this Article, the business of the Investment Limited Partnership may be resumed and continued as provided for in the Investment Limited Partnership Agreement or any subsequent agreement.</i></p>	<p>proceeding initiated under these provisions by the order of court and after a court determines the merits of any such proposed proceedings that the limited partnership has a case to answer. The court shall amongst other have the power to decline frivolous and vexatious proceedings brought under these provisions. Additionally, this first stage process shall be entirely at the cost of the party brining proceedings.</p>		
<p><i>Article 17 – Dissolution</i></p> <p><i>10. Notwithstanding the provisions of any other law, a claim against a general partner arising out of the dissolution of the Investment Limited Partnership shall be subject to prescription after five years commencing from the date on which the completion of the dissolution was announced in the Official Gazette.</i></p>	<p>A licensee: additional clarification should be included here to confirm that save for instances of fraud, any action against a partner must be initiated within five years of the partner’s exit.</p>	AM	<p>“Save in cases of fraud” will be added as suggested.</p>
<p><i>Article 19 – Penalties</i></p> <p><i>2. A fine not exceeding BD 100,000 and a prison term not exceeding twelve months shall be imposed on any general partner who</i></p>	<p>A licensee: clarification should be given for the sanctions and penalties imposed under these provisions so that the sanctions and/or penalties imposed under</p>	AN	<p>It goes without saying that the sanctions and/or penalties to be imposed by a judge should take into consideration the severity of the breach. This is a basic principle of criminal law and hence there is no need to introduce any additional wording to the</p>

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<p><i>had wilfully contravened the provisions of Articles 4(5), 6(1), 6(2), 6(3) and 6(4) of this law.</i></p> <p><i>3. A fine not exceeding BD 100,000 shall be imposed on any general partner who had negligently contravened the provisions of Articles 4(5), 6(1), 6(3) and 6(4) of this law.</i></p>	<p>these provisions so that the sanctions and/or penalties imposed take into consideration the severability of the breach.</p>		<p>draft.</p>
<p><i>Article 21 – Supplementary Provisions</i> <i>The following provisions, to the extent that they are specifically applicable to simple commandite companies together with general partners and limited partners in such companies, shall similarly apply to Investment Limited Partnerships, General Partners and Limited Partners:</i></p> <p><i>(a) Articles 457 to 460, 462, 470,471,472 and 474 of the Civil Code; and</i></p> <p><i>(b) In addition to the provisions referred to under Paragraph (1) of this Article, any provision in any other Law except the Company Law.</i></p>	<p>A licensee: Article 21: This article cross-refers to Article 472 of the Bahrain Civil Code. Article 472 of the Bahrain Civil Code states that If the assets of the company are not adequate to offset its debts, the partners shall be liable for these debts from their own property, each in proportion to his share in the losses of the company, unless there is an agreement providing for another proportion. Any agreement exempting a partner from his liability in respect of the debts of the company shall be null and void. As the liability of limited partners is limited to their contribution/commitment in the company, shouldn't Articles 472 of the Bahrain Civil Code be restricted to the liability of the</p>	<p>AO</p>	<p>The introductory words are clear, but for more clarity, the suggested wording will be added to the effect that “in the event of any conflict between the Investment Limited Partnership Law and the Bahrain Civil Code, the provisions of the Investment Limited Partnership Law shall prevail”.</p>

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	<p>General Partners only (and not the limited partners). We note the introductory wording at the beginning of Article 21 but as this is not clear, we request a clarification.</p> <p>We suggest a statement be included in Article 21 to the effect that in the event of any conflict between the Investment Limited Partnership Law, the Bahrain Civil Code and the Commercial Companies Law, the provisions of the Investment Limited Partnership Law shall prevail.</p>		
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