

## Limited Partnership Act (British Virgin Islands) Enacted

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We are pleased to announce the enactment of the new *Limited Partnership Act (British Virgin Islands)* ("LPA"). The LPA represents the culmination of the efforts of fourteen (14) lawyers from eight (8) British Virgin Islands law firms to create a state of the art limited partnership act. Stand out features of the LPA include the following:

- ease and cost-effectiveness of formation
- extensive flexibility and freedom of contract regarding the terms of the partnership agreement
- ability for a limited partnership to have legal personality
- a high degree of flexibility for dealing with limited partners who default on capital commitments
- provisions facilitating capital call financing
- protections for managers/GPs who manage a wide range of funds
- ability to publicly register security against a limited partnership with legal personality and to obtain priority under BVI law to the assets of the limited partnership as a result of the filing
- extensive safe harbour provisions for limited partners
- application of certain corporate law concept to limited partnerships, such as continuations, mergers, consolidations, redemptions of minority, interests and arrangements

The LPA is innovative and we believe will be highly attractive to funds, particularly private equity funds. Conyers Dill & Pearman is proud to be one of the leading firms spearheading the legislation.

The LPA was drafted using the style and approach of the *BVI Business Companies Act* (the "BBVI BC") (the highly successful BVI incorporation statute). Many of the concepts from the BVI BC were carried over to the LPA. The new LPA has the following provisions:

- A limited partnership has legal personality, unless it elects to be registered without legal personality. However, a limited partnership that has legal personality is not a body corporate.
- The rights created by legal personality are specified in the LPA. The LPA advances the concept of "legal personality" by recognising that it is more than a relationship but not a body corporate. A limited partner with legal personality only has such specified legal personality rights as are set out in the LPA including the following:
  - the right to institute legal proceedings in the name of the limited partnership
  - the right by an instrument in writing to create a charge over the assets of the partnership
  - the ability for a charge to be registered against the limited partnership and for such registration to provide priority under BVI law

- A limited partnership which does not have a general partner has ninety (90) days, or such shorter period as may be specified in the limited partnership agreement, to admit a new person as a general partner.
- A limited partnership is required to have a limited partnership agreement. A model agreement is deemed to be adopted except as modified or excluded by the signed limited partnership agreement. A model agreement allows limited partnerships to be formed quickly, particularly if the signed written limited partnership agreement has not yet been finalised.
- A limited partnership is formed by a registered agent filing an application as signed by or on behalf of each general partner setting out certain information as detailed in Section 9 of the LPA. The Registrar issues a certificate of registration, which shall state whether or not the limited partnership has legal personality. The limited partnership is formed on the date specified in the certificate.
- A limited partnership is required to have a registered agent and registered office in a manner similar to that of BVI business companies.
- A general partner may, but is not required to, make a contribution to the capital of the limited partnership.
- A general partner is required to act at all times in good faith and, subject to any contrary provision in the limited partnership agreement, in the interests of the limited partnership. The caveat allows a general partner to set up other limited partnerships without concern as to competing interests, provided the general partner is always required to act in good faith.
- The LPA provides an extensive list of the safe harbour provision for limited partners. The list is extensive and draws heavily on the provisions of Delaware, the Cayman Islands and the other overseas territories and Crown dependencies.
- Charges against limited partnerships may be registered on the public register. The LPA provides that a registered charge has priority over a subsequently registered charge or an unregistered charge, where the limited partnership has legal personality. This is a significant and unique development for BVI, in that other jurisdictions do not provide for priority of charges filed against a limited partnership.
- Related to charges, a limited partnership may grant security over uncalled capital commitments.
- The common law position on penalties, which brings into doubt the enforceability of the forfeiture provisions in the event of default on a capital call, has been disapplied meaning that such forfeiture provisions typical in most limited partnerships are enforceable.
- Several corporate concepts have been carried over from the BBVI BC, which are unique to BVI. It is hoped that the concepts will be useful to clients. These provisions include the following:
  - ability of a foreign limited partnership to continue into the British Virgin Islands
  - ability to continue to another jurisdiction
  - ability to merge or consolidate with another limited partnership, including a foreign limited partnership where the foreign law permits mergers and consolidations of limited partnerships
  - ability to redeem minority partnership interests (subject to the limited partnership agreement)
  - the right of a limited partner to dissent on a merger, consolidation or mandatory redemption (subject to the limited partnership agreement)
  - ability of a limited partnership to enter into a plan of arrangement or a scheme of arrangement

- Detailed provisions are included for the termination, deregistration and winding-up of a solvent limited partnership. Specifically, a limited partnership is first terminated. If it has no assets or liabilities it may apply to be deregistered. Otherwise and if solvent, its affairs are wound-up by the general partner or a liquidator. Thereafter, the limited partnership may deregister by way of application for strike off.
- Provision is also made for the winding-up of an insolvent limited partnership.
- There is also the ability of the Registrar to strike off a limited partnership (for example, for non-payment of fees). To the extent a limited partnership has been struck-off for a continuous period of seven years, it is deregistered with effect from the last day of that seven year period. However, the court may restore a deregistered limited partnership within seven years.
- Existing limited partnerships continue to exist under the existing *Partnership Act*, until they voluntarily re-register under the LPA. However, after a period of ten years, all limited partnerships remaining under the *Partnership Act* will be automatically reregistered under the LPA, and will have two additional years to adopt a compliant limited partnership agreement. Once the LPA comes into force, no new limited partnerships may be formed under the Partnership Act.

The LPA will come into force on such date as will be specified by notice published in the Gazette. Certain steps are required to be carried out to set up the Registry systems. However, it is anticipated that the LPA will come into force in the near future.

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