



British Virgin Islands' Limited Partnership Act

On 13 December 2017, the legislature of the British Virgin Islands passed the much anticipated Limited Partnership Bill, 2017 (the **Act**). Gazetting of the Act is imminent.

The Act completely modernises the law with respect to limited partnerships much in the way that the BVI Business Companies Act, 2004 completely modernised the British Virgin Islands corporate regime. The limited partnership structure will be familiar to most clients. A limited partnership is comprised of one or more general partners (the **GPs**, who manage the business of the partnership) and one or more limited partners (the **LPs**, who act as largely silent investors). The affairs of the limited partnership are governed primarily by the limited partnership agreement (**LPA**), making the relationship a contractual one, albeit subject to certain core statutory requirements. While limited partnerships have been available in the British Virgin Islands since 1996, the legislation allowing for them has not kept pace with commercial needs, making them relatively unattractive, particularly when compared to the popular and functional BVI business company. With this new Act, that changes.

The advantages of the limited partnership structure for investment activity and particularly for use as private equity funds are many and include:

1. An LP's liability is limited to its contribution and committed future contributions (if any).
2. As a limited partnership is a pass-through entity, its profits and losses flow through to its LPs without tax applying at the partnership level, providing tax relief to the limited partnership and tax benefits to the LPs. Losses in the limited partnership, if any, may be available to shelter LPs' other income.
3. Having only GPs responsible for control simplifies both management and operations.

Key Points

Legal Personality

A partnership is a contractual relationship between the partners, rather than a body corporate. A partnership does not, in the absence of some statutory regime permitting it, have a legal personality of its own. The Act provides that limited partnerships will have separate legal personality unless the GP elects otherwise. The flexibility to elect not to have legal personality is an important one, as there will be cases where there is a business advantage to maintaining the traditional form of partnership, while utilising other aspects of the limited partnership structure.

The Act provides that once a limited partnership has been registered, it will not be possible to change its status from having legal personality to not having legal personality or *vice versa*.

A limited partnership registered as a limited partnership with legal personality is not a corporate body. This preserves the concept of the limited partnership as a contractual relationship.

Liability

In a traditional partnership, the partners are individually liable for the unpaid debts and liabilities of the partnership. In a limited partnership, only the GP is liable for such debts and liabilities. Under the Act, it is expressly confirmed that the GP is only liable to the extent that the limited partnership cannot pay. This commercial certainty will be welcomed by investors.

LPs enjoy limited liability under the Act, so long as they do not take part in the management of the limited partnership. However, in some cases it is not entirely clear what actions may, inadvertently, expose an LP to liability. The Act sets out an extensive list of 'safe harbour' actions, being things that LPs can do within the limited partnership that would not expose them to risk of liability. Investors seeking to have a voice, but also being cautious to avoid liability, will welcome the clarity of these provisions.

The Limited Partnership Agreement

While the Act sets out provisions dealing with the operation and administration of the limited partnership, many of these provisions are stated to be 'subject to' the limited partnership agreement. The emphasis is on commercial flexibility, with the statute only applying to preserve fundamental safeguards.

Contributions

As a rule, the limited partnership agreement will govern the requirements for partners to make contributions (or to commit to make contributions) and how the return of contributions will be managed. However, to protect third parties doing business with the limited partnership, certain restrictions on the return of contributions (or the release from the obligation to pay commitments) are set out in the Act. Specifically, return of contributions (or release) is subject to a solvency test. An LP must repay any contribution returned to him contrary to the Act if he knew that, immediately following the payment or release, the limited partnership did not meet the solvency test. The window for clawback of returned contributions is limited to 6 months from the date of the payment or release, unless fraud was committed by or with the consent of the LP.

Security

Limited partnerships with legal personality will be able to register those charges made over its assets and the Act sets out provisions relating to the priority of security interests. This provides an important advantage to BVI limited partnerships when compared to limited partnerships registered under the regimes of most other international financial centres that do not offer this facility. This distinctive attribute bolsters the protection that is available to lenders of future BVI limited partnerships by providing both a public record of security registered against the assets of a limited partnership and a means for easily establishing priority of security registered in the BVI over those assets.

The security registration regime under the Act mirrors that of the BVI company legislation. The Act also draws on other provisions of the BVI Business Company Act, 2004, providing consistency in language and approach to aspects such as security, permitted names and foreign character names, mergers and consolidations, record keeping and liquidations.

Impact on Existing Limited Partnerships

In keeping with the commercially sensitive manner in which the Act was drafted, the legislature has taken care not to disrupt existing BVI limited partnerships or to expose those who prefer the *status quo* to additional expense. The existing limited partnership statutory provisions will continue to apply to those existing limited partnerships which elect not to re-register under the new Act for the time being. Any existing limited partnership that is not re-registered will, however, be re-registered under the Act automatically after ten years and will then have two years to adopt a new limited partnership agreement. The Act provides for a simple and cost-effective process. On re-registration, the limited partnership will be governed by the new Act, but its formation and existence under the former legislation is preserved.

Conclusion

The Act creates a new form of limited partnership that encapsulates the most modern business and investment-friendly techniques and developments into a single vehicle. It is unique in that it was designed and drafted with industry practitioners, including Appleby BVI, directly involved in the process. This has led to the Act dealing with issues that GPs and LPs face on a daily basis and providing partner-focussed solutions.

The new BVI limited partnership structure and the facility to register security interests against it will have a wide appeal, including to asset and wealth managers, particularly those operating in private equity and open-ended mutual funds, and lenders that provide financing to these industries. It is an innovative structure that represents the best techniques and flexibility in the limited partnership vehicle and it is poised to make the BVI a leading centre for limited partnerships.

Appleby BVI has a specialised focussed limited partnership team, including partners that were directly involved in the drafting of and consultation process around the Act. Should you have any questions, we invite you to contact:

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