Limited Partnership Act 2017

The BVI has modernized its partnerships regime with the enactment of a new Limited Partnership Act, 2017 (the "LP Act") and Limited Partnership Regulations, 2018, both of which entered into force on 11 January 2018.

A key feature of the new regime is that it allows limited partnerships the option of having legal personality, meaning a partnership can enter into contractual arrangements, commence or defend legal proceedings in its own name, and create a charge over its assets and register such charges so that they have priority over later registered or unregistered charges under BVI law.

The new LP Act is of significant interest to companies and individuals embarking on joint venture initiatives or setting up investment funds, as it provides the legal capacity and the flexibility to transfer interests or admit new investors.

Registering a New Limited Partnership

The process of registering a new limited partnership has changed significantly, in that new limited partnerships must have a written partnership agreement in place prior to registration. The written agreement provides for the rights and obligations of the partners between themselves and may provide for the affairs of the limited partnership and the conduct of its business activities.

The registered agent for the limited partnership also has to file a statement signed by or on behalf of each general partner specifying:

- the name of the limited partnership and its foreign character name, if any;
- the address of the registered office on registration;
- the name and address of the person who will be the registered agent of the limited partnership on registration;
- the name and address of each general partner; and
- the term for which the limited partnership is entered into or, if for an unlimited duration, a statement to that effect.

If the general partners do not want the limited partnership to have legal personality, they will have to file an irrevocable declaration stating so. The registered agent must also file its consent to act at the time of registration.

Partners and Management

The general partner of a limited partnership formed under the Act is responsible for the management of the limited partnership. The general partner may, but is not required, to make a contribution to the capital of the limited partnership. However, the general partner is nevertheless liable for all of the unpaid debts and liabilities of the partnership incurred while general partner – to the extent that the limited partnership itself cannot pay those debts and liabilities.

A limited partnership may have multiple general partners with joint liability and coextensive power and authority, however the limited partnership agreement may also provide that the powers of certain general partners are limited or that a particular power or authority may only be exercised by a particular general partner.

Liability of Limited Partners

Subject to the limited partnership agreement, the limited partner may, but is not required to, make a contribution to the capital of the limited partnership. If the limited partner makes a contribution, its liability for the debts and liabilities of the limited partnership is limited to the amount of its contribution or unpaid commitment to the limited partnership, unless it has took part in the management of the limited partnership at the time the liability was incurred.

A limited partner is not permitted to take part in the management of the limited partnership or to transact the business of, sign or execute documents for or otherwise bind the limited partnership. The LP Act provides an extensive list of activities which do not constitute management activities, including taking part in a decision concerning the amendment or replacement of the limited partnership agreement, participating in a meeting of the partners, consulting or advising a general partner about the business activities of the limited partnership. The limited partner does not owe any fiduciary duty to the limited partnership or any other partner when exercising its rights or obligations under the limited partnership agreement.

General Partners

A limited partner is required to have a General Partner however the General Partner does not need to be a BVI company, and where it is a foreign company that company is not required to be registered in the BVI. A General Partner may, but is not required by the LP Act, to make contribution to the capital of the Limited Partnership. Should a Limited Partnership not have a General Partner, the limited partners have up to ninety (90) days to admit a new General Partner.

Winding-up, liquidation and strike off

The LP Act includes detailed provisions for the termination, deregistration and winding-up of a solvent limited partnership, and in this regard, a clear distinction is made between each such concept. Specifically:

- a limited partnership is first "terminated" by its partners;
- 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, and thereafter, the limited partnership may deregister by way of application for strike off.

The ability to simply deregister an empty, defunct partnership, without having to undertake any form of liquidation procedure is welcome.

The LP Act also makes provision for the applicable procedure for the winding-up of an insolvent limited partnership under the BVI Insolvency, 2003, such procedure being essentially the same that would apply to an unlimited company.

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.

Continuation into the BVI

Foreign LPs may continue as limited partnerships under the LP Act if the laws of the jurisdiction in which they are registered permit it to continue in another jurisdiction, including the BVI.

An application by a foreign LP to continue under the LP Act shall be made to the BVI Registry by filing:

a certified copy of its certificate of registration or formation, or such other document as evidences its registration or formation;

a statement complying with section 8(2)(a);

a declaration signed by or on behalf of each general partner stating that the limited partnership shall not have legal personality, where the general partners of the foreign limited partnership wish to elect that the limited partnership shall not have legal personality on its continuation. The LP shall have legal personality unless this declaration is submitted confirming otherwise;

the written consent of the proposed registered agent to act as registered agent;

evidence satisfactory to the BVI Registrar that the application to continue has been approved by the general partners of the foreign limited partnership; and

evidence satisfactory to the Registrar that the foreign limited partnership is not disqualified from continuing in the Virgin Islands under section 66(2).

Once the BVI Registrar is satisfied with the documents filed, a certificate of continuation will be issued and a unique number be allotted to the LP under the LP Act.

Administrative requirements

Registers

The general partner of an LP is required to maintain:

- a register of general partners, containing details of the name, address and interest of each general partner, together with the date(s) of admission and withdrawal;
- a register of limited partners, containing details of the name, address and interest of each limited partner, together with the date(s) of admission and withdrawal; and
- a register of charges created over LP assets. The register of limited partners is, subject to the relevant limited partnership agreement, open to inspection by (a) all partners of the LP and (b) any other person with the consent of the general partner(s).

Financial records and underlying documents

An LP must keep financial records and underlying documents that:

- are sufficient to show and explain the transactions entered into by the LP; and
- will enable the financial position of the LP to be determined with reasonable accuracy at any time.

The LP must keep financial records and underlying documents for a period of at least five years from the date of completion of the transaction, or the termination of the business relationship, to which they relate.

The LP Act does not require an LP to produce financial statements, appoint an auditor or file an annual return.

Annual fee

LPs on the Register on 31 December of any year must pay their annual fees to the BVI Registry by 30 April of the following year. If the fees are not paid by 30 April, penalties begin to accrue from 1 May and, if the fees remain unpaid, LPs become liable to be struck off the Register.

Economic substance

LPs (and any general partner and/or limited partner of the LP that is itself a BVI LP or BVI company) must file their annual economic substance declaration and provide the same to the LPs registered agent for its submission into the BOSS system Authority within 6 months of the end of their financial period.