

BVI limited partnerships

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Introduction

The Limited Partnership Act, Revised Edition 2020 (as amended, the **LP Act**) provides a framework for the formation, operation and termination of BVI limited partnerships (**LPs**). Under the LP Act, an LP is constituted pursuant to a limited partnership agreement and will, by default, have separate legal personality unless the general partners elect otherwise prior to the LP's registration.

The previous key piece of legislation governing LPs was the Partnership Act, Revised Edition 2020 (as amended, the **Partnership Act**). No new LPs may be formed under the Partnership Act; however the Partnership Act continues to apply to and govern LPs formed under it until such LPs apply to be, or are automatically¹, re-registered under the LP Act.

This guide focuses on LPs formed under the LP Act. Please contact us if you require more information in relation to LPs formed under the Partnership Act.

What is an LP?

An LP:

- is a partnership formed between at least one general partner and at least one limited partner that is registered, re-registered or continued as an LP under the LP Act;
- confers (except as noted below) limited liability on its limited partners in respect of the debts and liabilities of the LP;
- has legal personality, unless it is registered without legal personality on the election of the general partner(s); and
- may be formed for the purpose of carrying on any lawful business or activity, whether or not for profit, in the BVI or elsewhere.

Formation

Documentation

An application to register an LP must be filed by the LP's proposed BVI registered agent with the Registrar of Limited Partnerships (the **Registrar**) and consists of:

- a registration statement signed on behalf of each general partner of the LP specifying certain prescribed information, including the LP's name, term, registered office, registered agent, the name and address of each general partner and, if applicable, a declaration that the LP will not have legal personality (see below);
- a letter of consent from the LP's proposed registered agent;
- any other required documentation; and
- the registration fee (currently US\$750).

The registration statement is publicly available.

Name

The name of an LP must end with the words 'Limited Partnership' or the abbreviation 'L.P.' or 'LP'. The use of certain words is restricted and the Registrar may refuse to register an LP, or direct that its name be changed, if it is considered not to comply with the requirements of the LP Act.

Register of Limited Partnerships

If the Registrar is satisfied that a registration application meets the requirements of the LP Act, the proposed LP will be registered in the Register of Limited Partnerships (the **Register**) and issued with a unique registration number and certificate of registration. An LP is formed on the date stated in the certificate of registration.

¹ LPs that have not previously applied for re-registration as LPs under the LP Act will be automatically re-registered as LPs in 2028 upon the expiry of the ten year transition period. Such LPs will then have a further two year period in which to adopt a limited partnership agreement.

Legal personality and capacity

An LP will, by default, have legal personality unless the general partners of an LP elect in the registration application that the LP be registered without legal personality. An election that an LP shall not have legal personality is irrevocable and failure to make an election is final. The LP Act states that an LP with legal personality is not a body corporate.

Subject to the LP Act, an LP with legal personality has full capacity to carry on or undertake any business or activity, do any act or enter into any transaction. The LP Act is silent as to the capacity of LPs without legal personality and, in such cases, capacity to undertake a specific act will stem from the underlying limited partnership agreement.

Limited partnership agreement

The LP Act requires that each LP has a written limited partnership agreement, which provides for the rights and obligations of the partners between themselves, and which may also provide for the affairs and business activities of the LP.

A model form of limited partnership agreement (the **Model Agreement**) is provided by the Limited Partnership Regulations, Revised Edition 2020 and will be deemed to be the partnership agreement of an LP on registration, unless a separate limited partnership agreement is entered into which excludes, modifies or is inconsistent with the Model Agreement. Consistent with international practice, our experience is that, in practice, LPs are formed with a short, modified version of the Model Agreement, which is subsequently restated with a longer, transaction-specific limited partnership agreement.

The limited partnership agreement does not need to be filed and is not publicly available.

General and limited partners

Any person, including a body corporate and a partnership, may be admitted to an LP as a general or limited partner. A person may be both a general partner and a limited partner of an LP though, where this is the case, the LP must have at least one other partner.

General partners

Role and duties

General partner(s) are responsible for the management of the LP in accordance with the terms of the limited partnership agreement. A general partner is the agent of the LP for the purposes of the business and activities of the LP, with power to bind the LP unless (a) the general partner in fact had no authority to act for the LP in a particular manner and (b) the person with whom the general partner is dealing either knows that the general partner had no authority to act or did not know or believe that the person was a general partner. Any debt or liability incurred by a general partner in the conduct of the business and activities of an LP will be a debt or liability of the LP.

Under the LP Act, a general partner is required to act:

- at all times in good faith; and
- subject to any express provisions to the contrary in the limited partnership agreement, in the interests of the LP.

Contributions

General partners may, but are not required to, make capital contributions to an LP.

Liability

Each general partner is jointly and severally liable for the unpaid debts and obligations of the LP incurred when that person was a general partner but only, subject to the terms of the limited partnership agreement, to the extent that the LP cannot pay those debts or obligations.

Limited partners

Role and duties

Limited partners are prohibited, when acting as limited partner, from (a) taking part in the management of the LP or (b) transacting the business of, executing documents for, or otherwise binding the LP.

Subject to the terms of the relevant limited partnership agreement, a limited partner of an LP does not owe any fiduciary duties to the LP or to any other partner in exercising any of its rights or authorities, or otherwise in performing any of its obligations under, the limited partnership agreement.

Contributions

Limited partners may, but are not required by the LP Act to, make capital contributions to an LP.

Limited liability

A limited partner of an LP is not liable for the debts and obligations of the LP beyond the amount of the limited partner's contribution or unpaid capital commitment, unless that person (a) takes part in the management of the LP or (b) is required to return monies to the LP or perform a released obligation, each as described below.

Liability – taking part in management

A limited partner who takes part in the management of an LP will be liable, to the same extent as a general partner, to a person who deals with the LP if, at the time the liability was incurred, the person to whom the liability was incurred (a) knew that the limited partner took part in the management of the LP and (b) reasonably believed, based on the limited partner's conduct, that the limited partner was a general partner.

This is a difficult test to satisfy and limited partners are further protected by the inclusion of broad 'safe harbour' provisions in the LP Act. Under these provisions, certain activities are stated as not constituting 'taking part in the management' of an LP; including:

- consulting with or advising a general partner about the business or activities of an LP, including doing so as a member of an advisory or investment committee of the LP;
- serving on, or appointing any person to serve on, a board or committee of the LP;
- consenting, or withholding consent, to any proposed business action of an LP in accordance with the limited partnership agreement;
- acting as surety or guarantor for the LP, either generally or in respect of specific obligation(s);
- taking part in decisions concerning:
 - the termination of the LP;
 - the purchase, sale or other disposal of an asset by the LP;
 - the approval or veto of investments proposed to be made by an LP, as a member of an investment or advisory committee;
 - the incurrence or renewal of indebtedness by the LP;
 - a change in the nature of the LP's business;
 - transactions in which one or more general partners have a conflict of interest with one or more limited partners; or
 - the admission, removal or withdrawal of a general or limited partner of the LP;
- discussing the strategic direction or financial prospects of the business of the LP; and
- enforcing rights under the limited partnership agreement, other than rights to carry out a management function.

Liability – return of capital

A limited partner shall not, whether on termination of an LP or otherwise:

- receive any payment from the assets of the LP representing a return of that partner's contribution to the LP; or
- be released from any outstanding obligation in respect of that partner's commitment,

unless, at the time of and immediately following the payment being made or release being effected, the LP is solvent.

A limited partner who receives such a payment or release is liable to the LP for the amount of the payment or due performance of the released obligation if the limited partner knew that, immediately following the payment or release, the LP was not solvent. However, a limited partner will only be liable in such circumstances:

- to the extent that the repayment or performance of the released obligation is necessary to discharge a debt or liability of the LP incurred during the period that the contribution or commitment represented an asset of the LP; and
- for a period of six months commencing on the date that the payment was made or the limited partner was released from the outstanding obligation.

Continuation, migration and re-registration under the LP Act

Foreign limited partnerships may apply to continue as an LP in the BVI under the LP Act. Similarly, a BVI LP may apply to be continued as a limited partnership under the laws of a jurisdiction outside the BVI.

Existing LPs formed under the Partnership Act², which have not yet re-registered under the LPA, may apply to be re-registered as LPs under the LP Act. An LP applying for re-registration under the LPA will be re-registered as an LP without legal personality unless the general partner(s) elect and sign a declaration that the LP is to have legal personality on re-registration.

Under the provisions of the LP Act, all remaining LPs formed under the Partnership Act that have not previously applied for re-registration as LPs under the LP Act will be deemed to be automatically re-registered and governed by the provisions of the LPA from the day after the ten year transition period ends.³ Such re-registered LPs will then have a further two year period in which to adopt a limited partnership agreement in accordance with the LP Act.

Mergers and consolidations

The LP Act contains provisions allowing LPs registered with legal personality to merge or consolidate with other BVI LPs or with foreign limited partnerships.

Termination

An LP terminates and its affairs are wound up if any of the following events occur:

- at a time or on the occurrence of a termination event specified in the limited partnership agreement;
- subject to the limited partnership agreement, following a resolution that the LP is terminated passed by all the general partners and limited partners holding capital contributions in excess of 50% (or such higher percentage as may be specified in the limited partnership agreement) of the total capital contributions made by all the limited partners;
- if there has been no general partner, or no limited partner, for ninety days (or such shorter period as may be specified in the limited partnership agreement);
- on the appointment of a liquidator of the LP; or
- on the LP being struck off the Register on any ground other than non-payment of fees or penalties.

Following the termination of an LP, the general partner(s) may:

- if the LP has no assets or liabilities, apply to the Registrar to de-register the LP; or
- if the LP is solvent and the general partner(s) has passed a solvency resolution in accordance with the LP Act, resolve to wind up the LP's affairs and distribute any surplus assets or appoint a liquidator to do so.

The LP Act also provides for the situation where the general partner(s) or liquidator winding up an LP believes that the LP is insolvent.

² These include local limited partnerships and international limited partnerships.

³ This will be in January 2028. The transition period is ten years after the date the LP Act came into force (11 January 2018).

Strike off and de-registration

The Registrar may strike an LP off the Register if:

- the LP does not have a registered agent or fails to file any return, notice or document required to be filed under the LP Act;
- the Registrar is satisfied that the LP has ceased to carry on business or is carrying on business which requires a licence, permit or authorisation under BVI law without having such licence, permit or authorisation; or
- the LP fails to pay its annual fee or any late payment penalty by the due date.

Before striking an LP off the Register on the above grounds, the Registrar must send the LP a notice of intention for it to be struck from the Register on a specified date (which must be not less than 30 days after the date of the notice) and publish a notice of intention of strike off in the BVI Official Gazette.

The Registrar must also publish a notice of the striking off of an LP from the Register in the BVI Official Gazette. An LP's strike off from the Register is effective from the date of the notice published in the BVI Official Gazette.

The Registrar may also strike an LP off the Register if the LP applies to be struck off the Register and the Registrar is satisfied that:

- a certificate of good standing could be issued for the LP;
- the LP has no assets or liabilities; and
- the LP is not carrying on business.

An LP that is struck from the Register on the above basis is considered to be de-registered with immediate effect.

Where an LP has been struck off the Register but not de-registered:

- the LP and the partners and any liquidator or receiver of the LP may not:
 - commence legal proceedings, carry on any business or in any way deal with the LP's assets;
 - defend any legal proceedings, make any claim or claim any right for, or in the name of, the LP; or
 - act in any way with respect to the LP's affairs;
- the LP, a general partner or any liquidator or receiver of the LP may:
 - apply to restore the LP to the Register;
 - continue to defend proceedings that were commenced against the LP before the date of striking-off; and
 - continue to carry on legal proceedings that were instituted on behalf of the LP before the date of striking-off.

An LP that has been struck-off the Register, but not de-registered, may still incur liabilities and any creditor may make a claim against the LP or a general partner.

Where an LP has been struck off the Register and remained struck off continuously for seven years, it will be de-registered at the end of that seven year period.

Restoration to the Register

An application to restore a struck off LP to the Register may be made by the LP or a creditor, partner or liquidator of the LP within seven years of the date of the notice of striking-off by the Registrar published in the BVI Official Gazette.

In order to be restored to the Register, the LP is required to pay the restoration fee and all outstanding fees and penalties. The Registrar must also be satisfied that:

- the LP will have at least one general partner and one limited partner on restoration;
- the LP will have a registered agent on restoration; and
- it is fair and reasonable for the LP to be restored to the Register.

Upon restoration to the Register, the Registrar will issue a certificate of restoration, the LP is deemed never to have been struck off the Register and it must immediately appoint a registered agent.

The LP Act also provides for an application to be made to the Court to restore a de-registered LP to the Register by a creditor, former partner or former liquidator of the LP or any person who can establish an interest in having the LP restored. Any application to the Court may not be made more than seven years after the date that the LP was de-registered. Upon the filing of a Court order with the Registrar to restore an LP, the Registrar will restore the LP to the Register with effect from the date and time that the copy of the Court order was filed and issue a certificate of restoration. Upon restoration to the Register, the LP is deemed to have continued in existence as if it had not been de-registered or struck off the Register.

Administrative requirements

Changes to registered particulars

If any changes are made to the details contained in the registration statement during the term of the LP, a notice of change in registered particulars, signed by one or more general partners, must be filed with the Registrar within 14 days of the change accompanied by the relevant fee.⁴ Failure to do so constitutes an offence by the partnership and each general partner, rendering them liable on summary conviction to a fine of up to US\$5,000. A change to an LP's registered agent or registered office is only effective under BVI law on registration by the Registrar. Any notice of change in registered particulars that is filed with the Registrar is publicly available.

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 assets⁵.

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.⁶

Annual fee

LPs on the Register on 31 December of any year must pay their annual fees (currently US\$750)⁷ to the Registrar 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.

⁴ Currently US\$50, which increases incrementally up to US\$200 if notice of change in registered particulars is filed later than 14 days of the change.

⁵ For more detail, please see our guide on registration of charges by BVI limited partnerships: [Creation of security by a BVI limited partnership](#).

⁶ However, if the LP is a BVI registered fund, it would need to comply with any applicable requirements relating to the preparation and submission of financial statements, the appointment of an auditor and any other BVI regulatory obligations, including filing of any return with the BVI Financial Services Commission. The limited partnership agreement may also require an auditor to be appointed.

⁷ The annual fees payable by LPs increase if paid after 30 April but before 31 July, with further increases if paid after 31 July but before 31 October or after 31 October, respectively. Similarly, penalties payable increase for the period between 1 May –to 31 July, 1 August to 31 October, and from 1 November, respectively.

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 with the BVI International Tax Authority within 6 months of the end of their financial period.⁸ Please see our guide [BVI economic substance legislation](#) for further information.

Registered office and registered agent

A BVI LP must at all times have a registered office in the BVI and a registered agent, who must have consented to act.

Contacts

If you would like more information, a full list of contacts specialising in BVI law can be found [here](#).

⁸ The LP's registered agent will ordinarily submit the economic substance declaration through the Beneficial Ownership Secure Search system, provided that the LP has submitted the relevant information to it and paid any associated economic substance reporting fee.

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](#). © 2023 MOURANT OZANNES ALL RIGHTS RESERVED