

A Practical Guide to Limited Partnerships in the BVI

The Limited Partnership Act 2017 (the **Act**) came into force in January 2018 and governs the formation of limited partnerships (**Limited Partnerships**) in the BVI from that date.

How do you register a Limited Partnership under the Act?

A Limited Partnership is formed by a registered agent filing with the BVI Registrar of Limited Partnerships (the **Registrar**):

- A statutory statement setting out certain information required by section 8 of the Act (a **Section 8 Statement**) signed by or on behalf of each general partner
- The registered agent's consent to act
- US\$750 registration fee

The Section 8 Statement must contain the following details about the Limited Partnership:

- Its name, including any foreign character name
- Its registered office address in the BVI
- Name and address of its registered agent in the BVI
- Name and address of its general partner/s
- The term (if any) for which the partnership is entered into

On registration a Limited Partnership has separate legal personality unless it elects to be registered without. If no separate personality is required, an additional declaration must be signed by the general partner confirming this. Once a Limited Partnership has been registered it cannot change whether or not it has separate personality.

The name of a Limited Partnership must include the words/letters "Limited Partnership" or "L.P." or "LP" and a name can be reserved for up to 90 days for an additional fee.

The Limited Partnership must have at least one general partner and one limited partner, each of whom have consented in writing to being appointed, and who cannot be the same person. The registered agent may be a limited partner, for example on initial registration of the Limited Partnership.

A Limited Partnership must also have a written partnership agreement (**LPA**), setting out the rights and obligations among the partners and which may provide for the affairs of the partnership and the conduct of its business and activities. A model agreement is deemed to be adopted under the Act, except as modified or excluded by the signed LPA. The model form is a short form agreement which allows a Limited Partnership to be formed quickly and which will then need to be replaced with a more detailed LPA setting out the way in which the Limited Partnership will be run. The LPA is not registered with any authority and is not open to public inspection in the BVI.

What happens after registration of a Limited Partnership under the Act?

Certificate of registration: On registration, the Registrar will issue a certificate of registration, stating whether or not the Limited Partnership has legal personality. The Limited Partnership is formed on the date of its registration, as set out on the certificate.

General Partner board resolutions: Where the general partner is a corporate entity, its board of directors (or equivalent) will need to approve, by board resolution, it becoming general partner of the Limited Partnership and related matters. There is no requirement under the Act for the general partner to be a BVI entity.

Partner letters of contribution: There is no requirement under the Act for a general partner or limited partners to make a contribution to the capital of the Limited Partnership, however where contributions are made, letters of contribution (or a subscription agreement) will need to be signed by the relevant partners.

Can an existing limited partnership re-register under the Act?

Existing limited partnerships under the Partnership Act 1996 continue to exist under that legislation until they voluntarily re-register under the Act. The registered agent of an existing limited partnership can apply to re-register the partnership and after 10 years all limited partnerships remaining under the Partnership Act will be automatically re-registered under the Act, then having a further two years to adopt a compliant LPA. On re-registration the Limited Partnership will not have separate legal personality unless the general partner so elects by declaration as part of the re-registration application.

What ongoing obligations are there for a limited partnership under the Act?

Register of general partners and register of limited partners: These registers must contain the name and address of each general/limited partner, the date on which they became and (if relevant) ceased to be a general/limited partner as well as details of their partnership interest. The registers, or copies of them, must be kept at the registered agent's office.

Register of charges: A Limited Partnership must maintain a register of all charges created over its assets, including floating charges, must be kept at the registered office of the Limited Partnership or the office of its registered agent. The register must show the date of creation of the charge, a short description of the liability secured by the charge and the asset charged, the name and address of the trustee for the security or the chargee, name and address of the holder of the charge and details of any restriction in the charge on the Limited Partnership's power to create any future charge ranking in priority to or equally with the charge.

Annual fee: An annual fee of US\$750 is payable by each Limited Partnership that is registered in the BVI on 31 December of any year, on or before 30 April of the following year.

Section 10 notice of change to Section 8 details: Any changes to the general partner details set out in the Section 8 Statement must be notified to the Registrar, by filing a notice of change signed by one or more general partner within 14 days of the change. If a Limited Partnership changes its registered office or its registered agent a notice of the change must also be filed. A Limited Partnership can also apply to the Registrar to change its registered name.

Security interests over limited partnership interests: Subject to the LPA, written notice of any security interest granted over the whole or part of a limited partnership interest must be given by the grantor (ie the limited partner) or the grantee (eg the lender) to the Limited Partnership.

Financial records: A Limited Partnership must keep at its registered agent's office (or such other place inside or outside the BVI as the general partners decide) the financial records and underlying documentation of the partnership. These records must be retained for a minimum period of five years and be sufficient to show and explain the partnership's transactions and to enable the financial position of the partnership to be determined with reasonable accuracy.

Subject to the LPA, each limited partner may demand and receive from the general partner true and full information regarding the state of the business and financial condition of the partnership.

What are other key features of the Act?

- Ability to register a charge against a Limited Partnership on the public register in the BVI and (for Limited Partnerships with legal personality) obtain priority under BVI law over subsequent charges or an unregistered charge. This is separate to the obligation to maintain a register of charges
- Extensive list of safe harbour provisions for limited partners in their dealings with the partnership, which are not considered to be taking part in the management of the Limited Partnership and so maintain and preserve limited partners' limited liability

- Inclusion of various corporate law concepts for Limited Partnerships, including merger, consolidation and redemption of minority partnership interests (with rights for dissenting limited partners), plans and schemes of arrangements and continuations
- Detailed and specific provisions for the termination, winding up, de-registration and striking off of solvent Limited Partnerships, and also for winding up insolvent Limited Partnerships.



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