

The New BVI Limited Partnership Act



By Lee Osborne, Senior Associate,
Bedell Cristin, Guernsey

DESPITE HAVING BEEN HIT BY TWO MAJOR HURRICANES IN SEPTEMBER 2017, the British Virgin Islands (the BVI) continues to demonstrate its commitment to being a leading international financial services centre with the enactment of the new Limited Partnership Act (British Virgin Islands) (the BVI LPA) last December. This new piece of legislation has important implications for investment fund structures and provides promoters with much greater flexibility in structuring partnerships in the BVI.

The BVI LPA is yet to be officially gazetted, but this is expected in the near future and, once in force, will replace the existing provisions of Part VI of the BVI's Partnership Act 1996 (the 1996 Partnership Act) for new BVI limited partnerships and those existing ones that elect to re-register under the BVI LPA.

Across global jurisdictions, a substantial number of investment funds structure themselves as limited partnerships to benefit

from their typical features, including capital flexibility, tax transparency and limited partner protection (to its contribution and committed future contributions, if any). However, limited partnership legislation across many global jurisdictions is relatively old and it can safely be assumed that the legislators of the time did not contemplate the significant expansion of the investment funds sector when pen was put to paper. An example of this is in England and Wales where limited partnerships remain governed by legislation enacted in 1907 (this piece of legislation has been substantially replicated in many common law jurisdictions, including in the BVI with its 1996 Partnership Act and it is not a surprise to see in the UK the recent reform of their limited partnership laws by the introduction of the new private fund limited partnership).


The new BVI LPA has been welcomed by BVI investment funds professionals and has been consciously modelled in both approach and application on the highly regarded and

popular BVI Business Companies Act (the BCA), one of the leading globally recognised incorporation statutes. Indeed, many of the corporate concepts from the BCA appear in the BVI LPA, including:

- the ability of a foreign limited partnership to migrate into the BVI;
- the ability of a BVI limited partnership to migrate out of the BVI;
- the right to publicly register security interests against the limited partnership over its assets (and, thereby provide priority under BVI law such that that a registered charge has priority over a subsequently registered charge or an unregistered charge, provided that the limited partnership has legal personality, which we discuss below);
- the ability to merge or consolidate with other limited partnerships;
- the ability to redeem minority partnership interests (in accordance with the limited partnership agreement);
- dissenting rights for limited partners to certain actions (merger/consolidation/compulsory redemptions) subject to the terms of the limited partnership agreement; and
- the ability of the limited partnership to enter into a plan or scheme of arrangement.

As for BVI Business Companies incorporated under the BCA, formation of a limited partnership under the BVI LPA will be quick and cost effective and will involve the filing of an application with the Registrar of Limited Partnerships (the Registrar), including a statement signed by, or on behalf of the general partner

“The new BVI LPA has been welcomed by BVI investment funds professionals and has been consciously modelled in both approach and application on the highly regarded and popular Business Companies Act, one of the leading globally recognised incorporation statutes.”



setting out certain prescribed particulars of the limited partnership, a declaration (if required) by the general partner that the limited partnership shall not have a legal personality and a document signed by the proposed registered agent evidencing its consent to act as such (as for BVI Business Companies, a registered agent and registered office in the BVI will be required).

Other highlights of the BVI LPA include the ability of the limited partnership to choose whether it is established with or without legal personality. On formation, a limited partnership will have legal personality unless it elects to be registered without legal personality (although a limited partnership having legal personality will not be a body corporate). The certificate of registration issued by the Registrar will state whether or not the limited partnership has legal personality. The rights created by legal personality are prescribed in the BVI LPA and include:

- the right to institute proceedings in the name of the limited partnership;
- the right to create a charge over the assets of the partnership; and
- the right to register security by way of charge against the limited partnership (as noted above, registration will provide priority under BVI law).

Unlike some jurisdictions, there is no requirement that the general partner is also incorporated or formed in the BVI. As such, this provides considerable flexibility in tailoring the partnership structure, particularly as many promoters may have preferred jurisdictions in which to form the general partner, or have existing general partner vehicles that they may wish to use. Whilst a limited partnership under the BVI LPA will be required to have a limited partnership agreement, in the absence thereof, a model agreement will be deemed to be adopted. In reality, of course, promoters and investors alike are likely to require bespoke contractual terms governing the limited partnership, however, the concept of having a model agreement available for adoption may facilitate speed of formation, in that, following initial formation; a bespoke limited partnership agreement can then be adopted. The organisational and constitutional elements of limited partnerships (including the

“Unlike some jurisdictions, there is no requirement that the general partner is also incorporated or formed in the BVI. As such, this provides considerable flexibility in tailoring the partnership structure ...”

admission of new partners, the transfer of limited partnership interests, information rights and limited partner returns of capital and contributions) are more closely aligned with standard market custom for investment vehicles and this may remove, to a certain extent, the requirement for extensive disapplication of provisions of the BVI LPA within the limited partnership agreement.

The BVI LPA deals neatly with the requirement of a general partner to act in good faith vis-a-vis it acting as a general partner of other limited partnerships. Whilst the overriding requirement remains that the general partner must act in good faith in all of its management activities of limited partnerships, the BVI LPA allows a general partner to form other limited partnerships without concern as to competing interests. In addition, the BVI LPA affords general partners greater flexibility to define their roles, liabilities and limitations in respect of the limited partnership and its activities. Helpfully, the BVI LPA prescribes an extensive list of activities that limited partners may engage in without being considered as participants in the management of the limited partnership, and as a result, risk losing their limited liability. The nature of such activities are analogous with applicable laws governing limited partnerships in other popular international finance centres, including Delaware, the Cayman Islands and other overseas territories and Crown dependencies.

Finally, the BVI LPA deals in some detail with the termination, de-registration and winding-up of limited partnerships. For solvent limited partnerships, the partnership is first terminated and may then apply to be de-registered provided that it has no assets or liabilities and its affairs are wound-up, either by the general partner, or by a

liquidator. As for BVI Business Companies, the limited partnership may then de-register by way of an application for strike off. Provisions for the winding-up of insolvent limited partnerships are also included in the BVI LPA. Again, evidencing the theme of the BVI LPA being consciously modelled on the BCA, the Registrar is given the power to strike-off a limited partnership (in similar circumstances to that of the BCA, for example for non-payment of fees etc.) and, as for BVI Business Companies, in the event that a limited partnership is struck-off for a continuous period of seven years, it is de-registered with effect from the last day of that seven year period.

The transitional provisions of the BVI LPA provide that existing limited partnerships continue to exist under the 1996 Partnership Act until they voluntarily re-register under the BVI LPA. Following a period of 10 years, all limited partnerships remaining under the 1996 Partnership Act will be automatically re-registered under the BVI LPA and will have a period of two years to adopt a compliant limited partnership agreement (whether the model agreement or a bespoke agreement). Following the date the BVI LPA comes into force, all limited partnerships will be formed under the BVI LPA.

What is quite clear from the BVI LPA is that this is not simply an update to existing legislation, but the creation of a modern investment business statute that looks to build on the success of many of the corporate concepts enshrined in the internationally renowned BCA, but with investment funds specifically in mind. The reformed legislation deals directly with many of the issues that both general partners and investors face with limited partnership structures and seeks to provide a more user-friendly product. ■