

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue rectangle containing the title text. The foreground shows a paved plaza with geometric patterns and a few small, cylindrical bollards.

British Virgin Islands Partnerships

Preface

This publication has been prepared for the assistance of those who are considering the formation of partnerships in the British Virgin Islands (the “B.V.I.”). It deals in broad terms with the requirements of B.V.I. law for the establishment and operation of partnerships, with a particular focus on limited partnerships. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients seek legal advice in the B.V.I. on their specific proposals before taking steps to implement them.

Before proceeding with the formation of a partnership in the B.V.I., persons are advised to consult their tax, legal, and other professional advisers in their own jurisdictions.

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1. INTRODUCTION

The partnership is a popular vehicle for international ventures primarily because it is regarded in most jurisdictions (including the U.S. and the U.K.) as fiscally transparent. As a general principle, tax is imposed at the partner level, not at the partnership level, and consequently the tax position of one partner does not affect the position of the other partners. Also, if the business or venture does not produce profits, each partner can often use his share of the loss to reduce his personal taxes. The rules of “control” (50% ownership, etc.) generally do not apply.

The principal statutes governing the formation and operation of B.V.I. partnerships are the Partnership Act, 1996 (the “Partnership Act”) and the Limited Partnership Act, 2017 (the “LPA”, and together with the Partnership Act, the “Partnership Acts”).

There are two types of partnership that may be formed under B.V.I. law. One kind is where all the partners have unlimited liability for the debts and obligations of the partnership (“general partnerships”). The other kind is where some of the partners have limited liability (“limited partnerships”).

Under the LPA, a limited partnership may be constituted with or without legal personality. General partnerships and limited partnerships without legal personality exist not as a legal entity with any degree of legal personality but merely as a relationship between the partners. Nevertheless, under B.V.I. law, a partnership without legal personality may function for most practical purposes as an entity. The rules of court permit a partnership to sue and be sued in its partnership name (however, this is likely to be limited to limited partnerships with legal personality and partnerships under the Partnership Act as section 49(1) of the LPA provides that legal proceedings by or against a limited partnership without legal personality may only be commenced against any one or more of the general partners). Sections 7 and 8 of the Partnership Act and the laws of agency empower the partnership to carry on business in its partnership name. Section 31 of the LPA empowers a general partner to carry on in the usual way the business or activities of the kind carried on by the limited partnership and any such act of a general partner shall bind the limited partnership.

Under the LPA, a limited partnership with legal personality has certain rights, including the right to institute proceedings in the name of the limited partnership, the right to create a charge over the assets of the limited partnership, for the charge to be registered against the limited partnership, and for such registration to provide priority. However, while “legal personality” is more than a relationship between the partners, it is not a body corporate. A limited partnership has legal personality unless, on the election of the general partners, it is registered without legal personality. The Partnership Act also allowed limited partnerships to be created, but these did not have legal personality. An election that a limited partnership shall not have legal personality is irrevocable and a failure to make such an election is final.

B.V.I. partnership law tends to follow English principles. The Partnership Acts substantially codified the common law on partnerships but provide that existing rules of equity and of common law shall continue in force except in so far as they are inconsistent with the express provisions of the Partnership Acts. Basically, the Partnership Acts deal with the nature of partnerships, relations of partners to persons dealing with them, and relations of partners to one another. The Partnership Act provides as follows: “Partnership is the relation which subsists between persons carrying on a business in common with a view to profit.”

Each element of the above definition is significant. A partnership must carry on a business. For this purpose, investment holding is considered to constitute sufficient business activity. Further, the business must be carried on “with a view to profit”. It is immaterial whether or not the business realises a profit, so long as the intention is to make such a profit. Under the LPA, the business of a limited partnership formed or re-registered under the LPA does not have to be carried out for profit.

Unlike company law, the Partnership Acts do not attempt to regulate the affairs of a partnership and, in particular, general partnerships to any great extent. The operation of the partnership is provided for in the partnership agreement. However, where the agreement is silent on a matter, the Partnership Acts may operate to produce a certain consequence. The partnership agreement is private (except to the extent of information in respect of the certificate of registration of limited partnership).

Since the LPA came into force on 11 January 2018, limited partnerships may only be formed under the LPA. Existing limited partnerships will continue to exist under the Partnership Act until they voluntarily re-register under the LPA. After 10 years, all limited partnerships remaining under the Partnership Act will be automatically re-registered and will have two additional years to adopt a compliant limited partnership agreement.

The LPA was drafted using the style and approach of the B.V.I. Business Companies Act, 2004 (the “B.V.I. BC”) (the highly successful B.V.I. incorporation statute). Many of the concepts from the B.V.I. BC, including continuation, merger, consolidation, arrangements and winding-up, were carried over to the LPA.

The rest of this publication relates to limited partnerships formed or re-registered under the LPA.

2. LIMITED PARTNERSHIPS

2.1. Formation and Registration

A limited partnership is formed by a registered agent filing (a) a statement signed by or on behalf of each general partner specifying (i) the name of the limited partnership and its foreign character name (if applicable), (ii) the address of the registered office of the limited partnership, (iii) the name and address of the registered agent of the limited partnership, (iv) the name and address of each general partner and (v) the term for which the partnership is entered into or, if for unlimited duration, a statement to that effect, (b) if the general partners wish to elect that the limited partnership shall not have legal personality, a declaration to this effect signed by or on behalf of each general partner, and (c) a signed consent to act as registered agent. Subject to the application complying with the LPA, the Registrar of Limited Partnerships (the “Registrar”) shall register the limited partnership in the Register of Limited Partnerships and issue a certificate of registration, which shall state whether or not the limited partnership has legal personality. The limited partnership is formed on the date specified in the certificate.

A limited partnership is required to have a limited partnership agreement. A model agreement is deemed to be adopted except as modified or excluded by, or inconsistent with, the signed limited partnership agreement. A model agreement allows limited partnerships to be formed quickly, particularly if the signed limited partnership agreement has not yet been finalised.

2.2. Administration

The regulation of limited partnerships in the B.V.I. is reasonably straightforward. Each partnership must maintain a registered office (which shall be a physical address in the B.V.I.) and appoint a local registered agent. No person shall be a registered agent unless he is so registered under the Companies Management Act, 1990 or under the Banks and Trust Companies Act, 1990 except that the registered agent of a limited partnership may be one of its limited partners.

A limited partnership must keep at the office of its registered agent, or at such other place or places within or outside the B.V.I. as the general partners may determine, the financial records and underlying documentation of the limited partnership in such form as are sufficient to show and explain the limited partnership's transactions and will, at any time, enable the financial position of the limited partnership to be determined with reasonable accuracy. The records and underlying documentation must be kept for at least five years from the date of completion of the transaction to which the records and underlying documentation relate or the limited partnership terminates the business relationship to which the records and underlying documentation relate.

2.3. Name

A limited partnership is required to use after its name the designation "Limited Partnership", "L.P." or "LP" (which may be used interchangeably). The name of a limited partnership may include the name of any partner.

A limited partnership may be registered with an additional foreign character name.

2.4. Limitation of Liability

Subject to the limited partnership agreement, a limited partner is not liable for the debts and liabilities of the partnership beyond the amount of the limited partner's contribution or unpaid commitment to the partnership. The position of a limited partner in a limited partnership is analogous to that of a shareholder in a company. A limited partner is a passive provider of funds to the partnership. The general partner or partners of a limited partnership are in the same position as partners of a general partnership.

The LPA provides an extensive list of the safe harbour provisions for limited partners. The list draws on the provisions of Delaware, the Cayman Islands, and the other overseas territories and Crown dependencies. These include that the limited partner would not be deemed to take part in the management of the limited partnership business (i.e., not subject to liability to third parties) by reason only of the limited partner holding an office or interest in, acting as a consultant, contractor or agent for, being an employee of or transacting business with a general partner of, the limited partnership, acting as surety or guarantor for the limited partnership, or taking part in a decision on certain matters, such as the sale of assets or the incurrence of indebtedness by the limited partnership.

2.5. General Partners

A limited partnership must have at least one general partner. If at any time a limited partnership does not have a general partner, it may within 90 days from the date the limited partnership ceased to have a

general partner, or such shorter period as may be specified in the limited partnership agreement, admit a person as a general partner.

Each general partner is jointly and severally liable for the unpaid debts and liabilities of the limited partnership incurred while it is a general partner. Unless the limited partnership agreement provides otherwise, a general partner is liable for any debts or liabilities of the limited partnership only to the extent that the limited partnership cannot pay those debts or liabilities.

Only the general partner or partners of a limited partnership may engage in the management or transact the business of the partnership. If a limited partner takes part in the management of the partnership he will be liable to persons who deal with the limited partnership, to the same extent as a general partner, if, at the time the liability of the limited partnership was incurred, the person to whom the liability was incurred (a) knew that the limited partner took part in the management of the limited partnership and (b) reasonably believed, based on the limited partner's conduct, that the limited partner was a general partner. However, the activities on the list of safe harbour provisions in section 2.4 above do not constitute taking part in the management of the partnership business.

A general partner has a duty to act in good faith and, subject to any contrary provision in the limited partnership agreement, in the interests of the partnership. The above caveat allows a general partner to set up other limited partnerships without concern as to competing interests, provided the general partner is always required to act in good faith.

Subject to the limited partnership agreement, a general partner may, but is not required to, make a contribution to the capital of the limited partnership.

The general partners of a limited partnership must maintain at the office of the registered agent of the limited partnership registers, or copies of registers, of general and limited partners in which must be recorded particulars including the name and address of each partner, the dates on which a person became and ceased to be a partner and particulars of the partnership interest of each partner.

The contribution of a partner may be assets or services, but does not include any moneys lent by the partner to the limited partnership.

2.6. Limited Partners

A limited partnership must have at least one limited partner.

Subject to the limited partnership agreement, a limited partner (a) may, but is not required to, make a contribution to the capital of the limited partnership and (b) is not the agent of the limited partnership or of any general partner or of any other limited partner, and has no authority to bind any of them.

2.7. Charges

Subject to the limited partnership agreement, a limited partnership with legal personality may, by an instrument in writing, create a charge over the assets of a limited partnership, including uncalled capital commitments. Charges against limited partnerships may be registered on the public register, similar to the registration of charges against companies. The LPA provides that a registered charge has priority over a subsequently registered charge or an unregistered charge, where the limited partnership has legal

personality. This is a significant and unique development for the B.V.I., in that other jurisdictions do not provide for priority of charges filed against a limited partnership.

A limited partnership must keep a register of all relevant charges created over the assets of the limited partnership. A copy of the register of charges must be kept at the registered office of the limited partnership or at the office of its registered agent.

2.8. Public Records of a Limited Partnership

A limited partnership must maintain a register of general partners and a register of limited partners. The register of general partnerships must contain:

- (a) in the case of each general partner that is an individual, the individual's:
 - (i) full name, including former name, if any;
 - (ii) usual residential address;
 - (iii) date and place of birth;
 - (iv) nationality;
 - (v) date of becoming a general partner; and
 - (vi) date of cessation as a general partner;
- (b) in the case of each general partner that is a corporate entity, the corporate entity's
 - (i) corporate name;
 - (ii) corporate or registration number, if any;
 - (iii) registered office or principal office;
 - (iv) address, but if the corporate entity is incorporated or registered in the BVI, its corporate or registration number only;
 - (v) date of becoming a general partner;
 - (vi) date of cessation as a general partner; and
- (c) particulars of the general partnership interest, if any, of each general partner.

The register of limited partners shall set out the particulars specified above as applicable in respect of each limited partner.

A limited partnership shall, within 30 days after the date of registration or continuation, file for registration by the Registrar a copy of its registers of general partners and limited partners or, in the case of private, professional or public investment funds or incubator or approved funds, its register of general partners.

A limited partnership that has filed for registration by the Registrar a copy of its registers of general partners and limited partners shall, within 30 days of any changes occurring, file the changes in the relevant register by filing a copy of the register containing the changes.

The requirements above relating to the registration of registers apply in the case of private, professional, public or private investment funds or incubator or approved funds to the register of general partners only.

The Registrar shall maintain a copy each of a limited partnership's register of general partners and limited partners, including any changes to the registers, and not make a copy of a limited partnership's registers of general partners and limited partners available to any person except the limited partnership or its registered agent, a competent authority acting in the lawful exercise of its powers under an enactment or for the purposes of dealing with a matter for which it has authority under an enactment, including pursuant to its obligations to a mutual legal assistance request received or made or to be made by it, and a law enforcement agency in the lawful performance of its investigative functions or in relation to the lawful exercise of its investigative powers and make available to any other person, upon request, a list of general partners contained in a limited partnership's register of general partners filed with the Registrar.

A limited partnership is also required to collect, keep and maintain adequate, accurate and up to date information on the beneficial owners of the limited partnership. The beneficial ownership information required must be filed for registration by the Registrar within 30 days after the date of registration of the limited partnership or, in the case of a continuation, within 30 days after the date of continuation of the limited partnership. Limited partnerships that are private, professional, public or private investment funds or incubator or approved funds are exempt from registration subject to the limited partnership's beneficial ownership information being held by a person who holds a Category 6 investment business licence pursuant to the Securities and Investment Business Act or its authorised representative or other person licensed by the FSC that has a physical presence in the BVI, and such information can be provided to the Registrar within 24 hours of request, by that person. Any change to the beneficial owner or information in relation to it or its interest in the limited partnership must also be filed with the Registrar within 30 days of becoming aware of the change.

2.9. Filing of Annual Financial Return

Limited partnerships are required to file annual financial returns which must be filed with and retained by their registered agents for a period of at least 5 years from the date it ceases to act as their registered agent. The return must be filed within 9 months after the end of the year to which the return relates and contain prescribed information and be in the prescribed form. There are penalties for non-compliance by a limited partnership and the registered agent commits an offence if it does not notify the Registrar of the limited partnership's failure to file a return.

Failure to file an annual return will disentitle a limited partnership from receiving a certificate of good standing. In such cases, a declaration in the approved form attesting that the limited partnership has filed its financial return with the registered agent which is complete or it is not due yet to file its financial return with its registered agent will be required in order to apply for a certificate of good standing.

2.10. Transactions Between Partners and the Limited Partnership

The common law position on penalties, which brings into doubt the enforceability of the forfeiture provisions in the event of default on a capital call, has been disapplied by the LPA. This means that such forfeiture provisions, and other consequences of failure to perform or breaches of the limited partnership agreement, are enforceable even if they are penal in nature.

2.11. Continuation

A foreign limited partnership may continue as a limited partnership formed under the LPA if the laws of the jurisdiction in which it is registered permit it to continue in another jurisdiction, including the B.V.I. A foreign limited partnership will be disqualified from continuing if it is being wound up or subject to insolvency proceedings, if a receiver or manager has been appointed, or if an application has been made to a court for the liquidation of the limited partnership. The documents required to file a continuation application with the Registrar are:

- (a) a certified copy of the certificate of registration or formation, or its foreign equivalent;
- (b) a statement signed by or on behalf of each general partner specifying (i) the name of the limited partnership and its foreign character name (if applicable), (ii) the address of the registered office of the limited partnership, (iii) the name and address of the proposed registered agent, (iv) the name and address of each general partner and (v) the term for which the partnership is entered into or, if for unlimited duration, a statement to that effect;
- (c) if the general partners wish to elect that the limited partnership shall not have legal personality, a declaration to this effect signed by or on behalf of each general partner;
- (d) a signed consent to act as registered agent;
- (e) evidence satisfactory to the Registrar that the application to continue has been approved by the general partners. Satisfactory evidence for this purpose may include a legal opinion or a certificate from a general partner of the foreign limited partnership; and
- (f) evidence satisfactory to the Registrar that the foreign limited partnership is not disqualified from continuing in the B.V.I. Satisfactory evidence for this purpose is an approved form certificate issued by a general partner of the foreign limited partnership attesting to the laws of the foreign limited partnership's jurisdiction permitting it to continue in the B.V.I. and the non-application of the disqualifications together with an extract of the law relied upon to support the statement. The certificate is required to be signed by a general partner of the foreign limited partnership and notarised or otherwise duly legalised in accordance with the laws of the jurisdiction of the foreign limited partnership.

Upon registering the necessary documents, the Registrar will issue a certificate of continuation certifying that the foreign limited partnership is continued as a limited partnership formed under the LPA on the date specified in the certificate. The certificate will state whether or not the limited partnership has legal personality.

2.12. Discontinuation from the B.V.I.

A limited partnership in good standing with the Registrar may continue as a limited partnership formed under the laws of a jurisdiction outside the B.V.I. in the manner provided under the laws of that jurisdiction. Where the limited partnership that wishes to continue as a limited partnership formed under the laws of a jurisdiction outside the B.V.I. has a charge registered in respect of an asset of the limited partnership under the LPA which has not ceased to affect the asset, it shall, before continuing and provided the charge does not contain a covenant prohibiting continuation outside the B.V.I., provide a written declaration to the Registrar specifying that:

- (a) a notice of satisfaction or release in respect of the charge has been filed and registered under the LPA;
- (b) where the charge has not been satisfied or released, that the chargee has been notified in writing of the intention to continue the limited partnership outside the B.V.I. and the chargee has given his or her consent or has not objected to the continuation; or
- (c) where the charge has not been satisfied or released and, after notification in (b) above, the chargee has not given his or her consent or has objected to the continuation, the chargee's interest secured by the registered charge will not be diminished or in any way compromised by the continuation and the charge shall continue as a liability of the limited partnership.

Where a limited partnership intends to continue as a limited partnership formed under the laws of a jurisdiction outside the BVI, it must, at least 14 days before filing a notice of such intention, (a)(i) advertise a notice of such intention in the Gazette and on its website (if any) and specify the jurisdiction to which it intends to continue, and (ii) notify the limited partners and creditors of the limited partnership in writing of such intention; and (b) file with the Registrar a notice of such intention in the approved form, which shall include a declaration that

- (i) the requirements of paragraph (a) above have been complied with;
- (ii) the limited partnership does not have any pending request from a competent authority to produce documents or provide information which has not been satisfied;
- (iii) a receiver has not been appointed over the limited partnership or in relation to the assets of the limited partnership; and
- (iv) the limited partnership is not aware of any legal proceedings, whether civil or criminal, pending against or in relation to the limited partnership or any general partner of the limited partnership as it directly pertains to the affairs of the limited partnership.

A limited partnership that has filed a notice of intention to continue as a limited partnership under the laws of a jurisdiction outside the BVI may, at any time before the Registrar issues a certificate of

discontinuance, de-register the limited partnership and publish the de-registration in the Gazette, rescind the notice by filing a notice of rescission in the approved form.

The limited partnership does not cease to be a limited partnership formed under the LPA unless the laws of the jurisdiction outside the B.V.I. permit the continuation and the limited partnership has complied with those laws, the registered agent of the limited partnership has filed with the Registrar the required notice of discontinuance, and the Registrar has issued a certificate of discontinuance of the limited partnership. To provide evidence that the limited partnership has complied with the laws of the jurisdiction outside the B.V.I., the limited partnership is required to file a declaration in the approved form confirming that the laws of the jurisdiction outside the B.V.I. permit the continuation of the limited partnership and that the limited partnership has complied with those laws. Where the discontinuance is dependent upon the issue of a certificate of discontinuance by the Registrar, the Registrar may rely upon a provisional certificate of continuance issued in respect of the limited partnership under the laws of the jurisdiction outside the B.V.I. as a basis to issue the certificate of discontinuance.

If the Registrar is satisfied that the requirements of the LPA have been complied with, it will: (a) issue a certificate of discontinuance; (b) de-register the limited partnership; and (c) publish the de-registration in the Gazette. Where a limited partnership is discontinued, (i) the limited partnership continues to be liable for all claims, debts and liabilities that existed prior to its discontinuation, (ii) no conviction, judgment, ruling, order, claim, debt or liability due or to become due, and no cause existing, against the limited partnership, shall be released or impaired by its discontinuation (iii) no proceedings pending by or against it shall be abated or discontinued by its discontinuation, and (iv) service of process may continue to be effected on its registered agent in the B.V.I. in respect of any claim, debt or liability of the limited partnership during its existence as a limited partnership under the LPA.

2.13. Merger, Consolidation and Arrangements

Two or more limited partnerships with legal personality may, subject to their limited partnership agreements, merge or consolidate in accordance with Part VII of the LPA. A consolidated limited partnership has legal personality. The following steps (which are similar to the procedure for a merger or consolidation between two B.V.I. business companies) must be taken to effect a merger or consolidation:

- (a) The general partners and limited partners whose capital contributions exceed 50 per cent of the total capital contributions of all the limited partners of each constituent limited partnership must approve a written plan of merger (or consolidation) (the “Plan”) setting out the pertinent details of the proposals;
- (b) An application for the registration of a surviving (in the case of a merger) or new consolidated (in the case of a consolidation) limited partnership must be made to the Registrar by the registered agent of the surviving limited partnership or proposed registered agent of a consolidated limited partnership;
- (c) The application shall be made by filing: (i) a declaration signed by or on behalf of each general partner of the surviving or consolidated limited partnership confirming that a plan of merger or consolidation has been approved by each constituent limited partnership; (ii)

- a statement signed by or on behalf of each general partner specifying the details of the surviving or consolidated limited partnership; and (iii) a signed consent to act as registered agent;
- (d) Upon being satisfied that the requirements of the LPA have been complied with, the Registrar will issue a certificate of merger or consolidation and, in the case of a consolidation, a certificate of registration for the consolidated limited partnership;
 - (e) The merger or consolidation is effective on the date of the certificate of merger or consolidation;
 - (f) The Registrar will de-register the limited partnership that does not survive a merger and each constituent limited partnership that participates in a consolidation; and
 - (g) The surviving limited partnership or consolidated limited partnership is liable for all liabilities of each constituent limited partnership and all assets of the constituent limited partnerships vest in it. In addition, all convictions, judgments, and proceedings against a constituent limited partnership continue and may be enforced against the surviving limited partnership or consolidated limited partnership.

One or more limited partnerships with legal personality may merge or consolidate with one or more foreign limited partnerships, if the foreign law permits the merger or consolidation.

Subject to the limited partnership agreement, the general partners and limited partners who have made capital contributions of more than 50 per cent of the total contributions made by all the limited partners may resolve to redeem minority partnership interests of limited partners of less than 10 per cent or such lower percentage as stated in the limited partnership agreement.

A limited partner may dissent from a merger (unless the limited partnership is the surviving limited partnership and the partner continues to hold the same or a similar interest in the limited partnership), consolidation, or mandatory redemption by giving notice to the limited partnership and, upon dissenting (subject to the limited partnership agreement), is entitled to payment of the fair value of his or her partnership interest.

A limited partnership may enter into a Court-approved plan of arrangement or a compromise or arrangement between the limited partnership and its creditors, or any class of them, or between the limited partnership and its partners, or any class of them. An “arrangement” in the context of a plan of arrangement includes an amendment to a limited partnership agreement, a reorganisation of a limited partnership, a merger or consolidation of one or more limited partnerships (including foreign partnerships), a separation of two or more businesses carried out by a limited partnership, a transfer, exchange or other disposition of any of the assets or business of a limited partnership or partnership interests, debt obligations or other securities in a limited partnership held by the holders thereof, or the termination and winding up of a limited partnership or any combination of the above. A resolution of all the general partners is required to approve a plan of arrangement. A final order of the Court approving a plan of arrangement is binding on the limited partnership and its partners.

An “arrangement” in the context of a compromise or arrangement between a limited partnership and its creditors includes a reorganisation of the limited partnership interests, whether by the consolidation or by the division of those interests. An application to the Court may be made by the limited partnership or a creditor, partner, or liquidator of the limited partnership. If a majority in number representing 75% in value of the creditors or all the general partners and limited partners who own more than 75% of the interest in the limited partnership profits held by all the limited partners agrees to the compromise or arrangement, then the compromise or arrangement, if sanctioned by the Court, is binding on all the creditors or class of creditors, or the partners or class of partners, as the case may be, and the limited partnership, or the liquidator (in the case of a limited partnership in liquidation).

2.14. Termination, Winding up and De-registration

A limited partnership terminates and is required to be wound up (a) on the occurrence of an event specified in the limited partnership agreement, if any, (b) subject to the limited partnership agreement, by a resolution of all its general partners and limited partners with capital contributions exceeding 50 per cent of the total capital contributions by limited partners, (c) if there has been no general partner or no limited partner for 90 days or such shorter period specified in the limited partnership agreement, (d) on the appointment of a liquidator, or (e) on the partnership being struck off the Register on any ground other than for the non-payment of fees or penalties.

Subject to the limited partnership agreement, a limited partnership does not terminate and is not required to terminate or wind up by any change in the limited partners, and a limited partner may not terminate a limited partnership by notice.

After the termination, the general partners may: (a) if the limited partnership has no assets and no liabilities, apply to the Registrar to de-register the partnership; or (b) if the general partners have passed a solvency resolution, resolve to wind up its affairs or appoint a liquidator to wind up its affairs and distribute its assets. Following the winding up, the limited partnership may de-register by way of application for strike-off.

A limited partnership may be wound up by a Court-appointed liquidator on the application of a partner, a creditor, the registered agent, the Official Receiver, or the Attorney General if it has terminated but is not being wound up, is insolvent or the Court is of the opinion that it is just and equitable or in the public interest that a liquidator be appointed. An insolvent limited partnership may only be liquidated under the Insolvency Act, 2003 as if the limited partnership were an unlimited company.

The Registrar also has the ability to strike off a limited partnership for a number of reasons including failure to file returns, not having a registered agent, non-payment of fees, the limited partnership ceasing to carry on business, or carrying on business without a licence where one is required. An application may be made to the Registrar within 5 years of the date of the publication of the notice of striking off in the Gazette to restore a limited partnership. An application may also be made to the court to restore a de-registered limited partnership within 5 years of its de-registration.

3. ECONOMIC SUBSTANCE

The Economic Substance (Companies and Limited Partnerships) Act, 2018 (the “ES Act”) requires all **Legal Entities** carrying on a **Relevant Activity** during a **Financial Period** to establish economic

substance in the BVI. For BVI companies and limited partnerships with legal personality incorporated or formed before 1 January 2019, the first Financial Period started on 30 June 2019.

The bold faced capitalised terms in the previous paragraph are defined in the ES Act. Their definitions are not 'standard' definitions, but rather are precise definitions which determine the application of the ES Act. Reference is made to the ES Act and the Rules on Economic Substance (the "Rules") for the definitions.

3.1. Legal Entity

A BVI company or a limited partnership is a Legal Entity unless (a) it is resident for tax purposes in a jurisdiction outside of the BVI and (b) that jurisdiction is not on Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes, the "EU blacklist".

3.2. Relevant Activities

A Legal Entity is carrying on a Relevant Activity if it carries on any of the following activities:

- Banking business
- Distribution and service centre business
- Financing and leasing business
- Fund management business
- Headquarters business
- Holding business
- Insurance business
- Intellectual property business
- Shipping business

3.3. Financial Period

Economic substance is assessed over a period of time, generally one year. The ES Act refers to this period as a Financial Period, although the period is unrelated to a Legal Entity's accounting period.

For a BVI limited partnership with legal personality formed before 1 January, 2019 the first Financial Period started on 30 June, 2019. For a BVI limited partnership with legal personality formed on or after 1 January 2019 and limited partnerships without legal personality formed on or after 1 July, 2021, the first Financial Period started on the date of formation. For limited partnerships without legal personality formed before 1 July, 2021, the first Financial Period started on 1 January, 2022. The Financial Period repeats every year. It is possible for a Legal Entity to change the start date of future Financial Periods by applying to shorten its current Financial Period.

A Legal Entity must have economic substance in the BVI any time it carries on a Relevant Activity in a Financial Period.

3.4. Requirements on Entities Not Carrying on a Relevant Activity

All BVI companies and limited partnerships will need to make a report, irrespective as to whether they are a Legal Entity (as defined), as to their compliance with the economic substance requirements during their Financial Period. If an entity has not carried on a Relevant Activity at any time during its Financial Period, the report will be a simple statement to this effect. Please see Timing and Reporting below.

3.5. Requirements on Those Entities Claiming Tax Residence Outside of the BVI

If an entity is carrying on a Relevant Activity, it is not required to establish economic substance in the BVI if it is tax resident outside of the BVI. In this instance it is not a Legal Entity (as defined). However, in order to claim tax residency outside of the BVI, it will be necessary to provide evidence of this residency in the other jurisdiction. This evidence could be a letter or certificate from the foreign competent tax authority to this effect or could be an assessment for tax or other evidence that tax has been paid.

It is recognised that some entities are considered “transparent” for tax purposes. In this case, it will be necessary to demonstrate tax residency in another jurisdiction by reference to each of the participators (shareholders, partners or the like).

It is also recognised that some jurisdictions do not tax based on a concept of residency. In these instances, it will be necessary to demonstrate that the income of the entity is subject to tax in the other jurisdiction.

It is not possible to claim tax residency in a jurisdiction which is on the EU blacklist.

There are also provisions for provisional tax residency in a foreign jurisdiction in the event evidence is not available at the time of the BVI reporting as to the foreign tax residency but is expected at a later date.

3.6. Requirements on Legal Entities if carrying on Holding Business

Unlike the other eight categories of Relevant Activities, the ES Act looks only at the assets of the Legal Entity to determine if it is carrying on Holding Business. There is no analysis of the activities of the Legal Entity other than a review of its assets.

A Legal Entity is carrying on Holding Business if it only holds equity participations in other entities and only earns dividends and capital gains. The definition is deliberately narrow intending to capture Legal Entities which hold nothing but equity participations which yield dividends or capital gains. If a Legal Entity holds any other assets or owns any other form of investment (such as an interest bearing bond) then it is not carrying on Holding Business. However, a Legal Entity which carries on any number of businesses could still be carrying on Holding Business if its only assets are equity participations.

To the extent a Legal Entity is carrying on Holding Business, then the economic substance requirements of the Act are less onerous. Specifically, the Legal Entity will need to have “adequate employees and

premises for holding equity participations” and, where it manages those equity participations, it will need to have “adequate employees and premises for carrying out that management”.

For a Legal Entity carrying on a passive Holding Business (i.e. it is not “managing” the equity participations), the Rules note that the Legal Entity will have a registered agent and that this will be taken into account when assessing economic substance. It is also noted in the Rules that it is not the function of the ES Act to require a Legal Entity to incur more expenditure or engage more employees than it really needs. As such, while the analysis will be fact sensitive, it appears that Legal Entities carrying on a passive Holding Business will likely fulfil the economic substance requirements with their BVI registered agent and their BVI registered office (and the BVI based secretary in the case of clients of Conyers Corporate Services). An annual filing will still be required. Please see Timing and Reporting below.

To the extent a Legal Entity is carrying on an active Holding Business (i.e. it is “managing” the equity participations), then it will need to establish economic substance in the BVI.

3.7. Requirements on Legal Entities if Carrying on Other Relevant Activities

A Legal Entity carrying on one or more of the other eight Relevant Activities will need to establish economic substance in the BVI. This will require that (i) the Relevant Activity is directed and managed in the BVI, (ii) the Legal Entity has an adequate number of suitably qualified employees, appropriate premises and adequate expenditure in the BVI, and (iii) Core Income Generating Activity is carried on in the BVI.

3.8. Timing and Reporting

All BVI companies and limited partnerships will need to make a report, irrespective as to whether they are a Legal Entity or carrying on a Relevant Activity.

A report as to compliance with the economic substance requirements during the previous Financial Period must be submitted within six months of the end of the Financial Period. For BVI companies and limited partnerships with legal personality incorporated or formed before 1 January 2019, this means the first report had to be made no later than 29 December 2020, and for BVI companies and limited partnerships with legal personality incorporated or formed on or after 1 January 2019 and limited partnerships without legal personality formed on or after 1 July, 2021, the first report had to be made no later than 18 months from the date of incorporation or formation (in each case assuming the Legal Entity has not applied to shorten its Financial Period). For limited partnerships without legal personality formed before 1 July, 2021, the first report had to be made no later than 31 December 2022.

For an entity that has not carried on a Relevant Activity at any time during the Financial Period, the report will simply be a statement to this effect. For an entity that has carried on a Relevant Activity at some point during the Financial Period but does not satisfy the definition of Legal Entity because it was resident for tax purposes in another jurisdiction during the Financial Period, the report will need to include evidence of the entity being resident for tax purposes in the other jurisdiction.

Otherwise, a Legal Entity carrying on a Relevant Activity other than Holding Business at any time during a Financial Period will be required to report the following information:

- the Legal Entity's tax identification number, if any,
- the type of mobile income,
- the amount and type of gross income in relation to the Relevant Activity,
- the total amount of expenditure incurred in relation to the Relevant Activity generally,
- the total amount of expenditure incurred in relation to the Relevant Activity in the BVI,
- the amount and type of assets and premises held in the course of carrying out the Relevant Activity,
- the net book values of tangible assets held in the course of carrying out the Relevant Activity,
- the total number of employees of the Legal Entity,
- the total number of employees engaged in the Relevant Activity generally,
- the number of employees engaged in the Relevant Activity within the BVI,
- details of the employees engaged in the Relevant Activity including:
 - name, and
 - whether the employee is full time or part time and qualification or years of relevant experience,
- the core income generating activity in relation to each Relevant Activity being conducted,
- the address of any premises within the BVI which is used in connection with the Relevant Activity,
- details of the persons responsible for the direction and management of the Relevant Activity, together with their relationship to the Legal Entity and whether they are resident in the BVI,
- details of the board meetings held by the Legal Entity including:
 - the total number of board meetings held generally,
 - the total number of board meetings held in the BVI,
 - the quorum for board meetings,
 - whether the meetings and decisions were minuted and kept in the BVI,
 - whether the quorum of directors was physically present in the BVI,
- details of the directors of the Legal Entity including name, qualifications, years of relevant experience and whether they are physically present in the BVI,

- in the case of an intellectual property business, the nature of any equipment located within the BVI, whether the Legal Entity is a high risk IP legal entity and additional information if the Legal Entity wishes to contest the rebuttable presumption.

A Legal Entity carrying on a Holding Business will have to report the following information in respect of each Financial Period:

- its taxpayer identification number, if any,
- the type of mobile income,
- the amount and type of gross income in relation to the Relevant Activity,
- the total amount of expenditure incurred in relation to the Relevant Activity in the BVI,
- the amount and type of assets and premises held in the course of carrying out the Relevant Activity,
- the net book values of tangible assets held in the course of carrying out the Relevant Activity,
- the total number of employees of the Legal Entity,
- whether the activities carried out by the Legal Entity are active or passive and, if active, details of qualified employees engaged in the Relevant Activity including name, whether the employee is full time or part time and their qualifications or years of relevant experience.

3.9. Monitoring and Enforcement

The ITA will be responsible for implementing, monitoring and enforcing the economic substance regime.

Failing to provide information or providing false information attracts criminal penalties. The penalties can be severe, including in the case of conviction on indictment to a fine not exceeding US\$75,000 or imprisonment for a term not exceeding five years.

Otherwise, a Legal Entity carrying on a Relevant Activity which fails to comply with the ES Act is subject to penalty, strike off or both (although not a criminal penalty).

4. TAXATION AND GOVERNMENT FEES

4.1. Taxation

At the date of this publication, there is no estate, inheritance, succession or gift tax payable with respect to any partnership interests, debt obligations or other securities of a limited partnership. Further, all distributions, return of contributions, interest, rents, royalties, compensations and other amounts paid by such limited partnership, and any capital gains realised with respect to any partnership interests, debt obligations, or other securities of a limited partnership are exempt from the Income Tax Ordinance of the B.V.I.

Limited partnerships are not subject to any stamp duty in the B.V.I. other than in relation to the transfer of an interest in land situate in the B.V.I. or transactions in respect of the interests, debt obligations, or other securities in or of a land owning limited partnership.

4.2. Government Fees

The annual government fee is payable by 30 April of each year. For a current listing of government fees, please contact Conyers Dill & Pearman.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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