

Limited Partnership Act (British Virgin Islands) Enacted 英属维尔京群岛《有限合伙法》已制定

We are pleased to announce the enactment of the new Limited Partnership Act (British Virgin Islands) ("LPA"). The LPA represents the culmination of the efforts of fourteen (14) lawyers from eight (8) British Virgin Islands law firms to create a state of the art limited partnership act. Stand out features of the LPA include the following:

- ease and cost-effectiveness of formation
- extensive flexibility and freedom of contract regarding the terms of the partnership agreement
- ability for a limited partnership to have legal personality
- a high degree of flexibility for dealing with limited partners who default on capital commitments
- provisions facilitating capital call financing
- protections for managers/GPs who manage a wide range of funds
- ability to publicly register security against a limited partnership with legal personality and to obtain priority under BVI law to the assets of the limited partnership as a result of the filing
- extensive safe harbour provisions for limited partners
- application of certain corporate law concept to limited partnerships, such as continuations, mergers, consolidations, redemptions of minority, interests and arrangements
- 成立流程简便且可节省成本
- 可灵活自由地订立合伙协议条款
- 有限合伙可享有法人资格
- 可高度灵活地处理有限合伙人不按承诺出资的情况
- 列有促成资本催缴融资的条款
- 可为管理各类基金的基金经理／普通合伙人提供保护
- 可对具有法人资格的有限合伙进行公开担保登记，并在备案后根据英属维尔京群岛法律享有优先获得有限合伙资产的权利
- 为有限合伙人提供广泛的安全港条款
- 将公司的存续、合并、整合、少数股权赎回、利益和安排等若干公司法概念应用于有限合伙

The LPA is innovative and we believe will be highly attractive to funds, particularly private equity funds. Conyers Dill & Pearman is proud to be one of the leading firms spearheading the legislation.

我们欣然宣布新的英属维尔京群岛《有限合伙法》（下称“《有限合伙法》”）已制定。这部新法规得以面世是八(8)间英属维尔京群岛律师事务所十四(14)名律师共同努力的成果，他们致力于编制一部现阶段最完善的有限合伙法。新法规的主要特点包括：

《有限合伙法》极富创新性，我们相信其对基金（特别是私募股权基金）的吸引力极大。康德明律师事务所很荣幸成为牵头执行这项法规的主要律所之一。

The LPA was drafted using the style and approach of the *BVI Business Companies Act* (the “BBVI BC”) (the highly successful BVI incorporation statute). Many of the concepts from the BVI BC were carried over to the LPA. The new LPA has the following provisions:

- A limited partnership has legal personality, unless it elects to be registered without legal personality. However, a limited partnership that has legal personality is not a body corporate.
- The rights created by legal personality are specified in the LPA. The LPA advances the concept of “legal personality” by recognising that it is more than a relationship but not a body corporate. A limited partner with legal personality only has such specified legal personality rights as are set out in the LPA including the following:
 - the right to institute legal proceedings in the name of the limited partnership
 - the right by an instrument in writing to create a charge over the assets of the partnership
 - the ability for a charge to be registered against the limited partnership and for such registration to provide priority under BVI law
- A limited partnership which does not have a general partner has ninety (90) days, or such shorter period as may be specified in the limited partnership agreement, to admit a new person as a general partner.
- 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 the signed limited partnership agreement. A model agreement allows limited partnerships to be formed quickly, particularly if the signed written limited partnership agreement has not yet been finalised.
- A limited partnership is formed by a registered agent filing an application as signed by or on behalf of each general partner setting out certain information as detailed in Section 9 of the LPA. The Registrar issues 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.

《有限合伙法》以《英属维尔京群岛商业公司法》（一部具成效的英属维尔京群岛公司注册法规）的格式和步骤起草。《有限合伙法》延用了《英属维尔京群岛商业公司法》的许多概念。新的《有限合伙法》包含以下条文：

- 有限合伙具有法人资格，除非其选择登记为不具备法人资格的有限合伙。但具有法人资格的有限合伙并非法人团体。
- 《有限合伙法》列有法人资格所赋予的权利。《有限合伙法》所指的“法人资格”表示有限合伙不单只是一种关系，但亦不属于法人团体。具有法人资格的有限合伙人仅享有《有限合伙法》列明的法人资格权利，包括：
 - 以有限合伙的名义提起法律诉讼的权利
 - 以书面文书形式对合伙资产设立抵押的权利
 - 可对有限合伙进行抵押登记，该抵押登记根据英属维尔京群岛法律享有优先受偿权
- 无普通合伙人的有限合伙可在九十(90)天或有限合伙协议可能指定的较短期间内接纳新成员为普通合伙人。
- 有限合伙必须制定有限合伙协议。协议通常会采用范本，但签署的有限合伙协议可能对范本内容有修改或删减。特别是在签署的书面有限合伙协议尚未最终定稿时，采用协议范本便于快速成立有限合伙。
- 有限合伙通过一名注册代理人提交由各普通合伙人或其代表签署的申请而成立，申请须列明《有限合伙法》第9条详述的若干信息。注册处处长签发登记证书，其中会说明有限合伙是否具有法人资格。有限合伙视为在证书注明的日期成立。

- A limited partnership is required to have a registered agent and registered office in a manner similar to that of BVI business companies.
- A general partner may, but is not required to, make a contribution to the capital of the limited partnership
- A general partner is required to act at all times in good faith and, subject to any contrary provision in the limited partnership agreement, in the interests of the limited partnership. The 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.
- The LPA provides an extensive list of the safe harbour provision for limited partners. The list is extensive and draws heavily on the provisions of Delaware, the Cayman Islands and the other overseas territories and Crown dependencies.
- Charges against limited partnerships may be registered on the public register. 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 BVI, in that other jurisdictions do not provide for priority of charges filed against a limited partnership.
- Related to charges, a limited partnership may grant security over uncalled capital commitments.
- 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 meaning that such forfeiture provisions typical in most limited partnerships are enforceable.
- Several corporate concepts have been carried over from the BBVI BC, which are unique to BVI. It is hoped that the concepts will be useful to clients. These provisions include the following:
 - ability of a foreign limited partnership to continue into the British Virgin Islands
 - ability to continue to another jurisdiction
- 有限合伙须按类似于英属维尔京群岛商业公司的方式设立注册代理和注册办事处。
- 普通合伙人可以但毋须为有限合伙注资。
- 普通合伙人必须一直秉诚行事，并（除非有限合伙协议有任何相反规定）为有限合伙的利益行事，这就允许普通合伙人建立其他有限合伙，无需考虑利益冲突，但前提是普通合伙人必须一直秉诚行事。
- 《有限合伙法》为有限合伙人提供了一份详尽的安全港条款清单。该清单覆盖面广，并大量引用了特拉华州、开曼群岛和其他海外领土和皇家属地的规定。
- 针对有限合伙的抵押可在公众登记册内登记。《有限合伙法》规定，如有限合伙具有法人资格，则针对其的已登记抵押较随后登记的抵押或未登记抵押具有优先受偿权。这是英属维尔京群岛一项影响重大和特有的发展，因为其他司法管辖区均无关于有限合伙抵押优先权的规定。
- 就抵押而言，有限合伙可用其未催缴的资本承担作为抵押。
- 普通法对罚则的规定可导致没收条款在资本催缴违约时的可执行性受到质疑，该规定不再适用意味着大多数有限合伙中惯有的没收条款可强制执行。
- 《有限合伙法》延用了《英属维尔京群岛商业公司法》中许多特别适用于英属维尔京群岛的条文。希望这些条文将对客户有用。这些条文包括以下内容：
 - 外国有限合伙可在英属维尔京群岛存续
 - 有限合伙可在另一司法管辖区存续

- ability to merge or consolidate with another limited partnership, including a foreign limited partnership where the foreign law permits mergers and consolidations of limited partnerships
- ability to redeem minority partnership interests (subject to the limited partnership agreement)
- the right of a limited partner to dissent on a merger, consolidation or mandatory redemption (subject to the limited partnership agreement)
- ability of a limited partnership to enter into a plan of arrangement or a scheme of arrangement
- Detailed provisions are included for the termination, deregistration and winding-up of a solvent limited partnership. Specifically, a limited partnership is first terminated. 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. Thereafter, the limited partnership may deregister by way of application for strike off.
- Provision is also made for the winding-up of an insolvent limited partnership.
- 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.
- Existing limited partnerships continue to exist under the existing Partnership Act, until they voluntarily re-register under the LPA. However, after a period of ten years, all limited partnerships remaining under the Partnership Act will be automatically reregistered under the LPA, and will have two additional years to adopt a compliant limited partnership agreement. Once the LPA comes into force, no new limited partnerships may be formed under the Partnership Act.
- 有限合伙可兼并或合并另一有限合伙（包括外国有限合伙），但前提是外国法律准许兼并或合并有限合伙
- 有限合伙可赎回少数合伙权益（但受限于有限合伙协议的规定）
- 有限合伙人可反对兼并、合并或强制赎回（但受限于有限合伙协议的规定）
- 有限合伙可订立重组安排计划或其他安排计划
- 包括有偿付能力的有限合伙终止、撤销和清盘的详细条款。具体来说，第一步应该先终止有限合伙。如果有限合伙无资产或负债，则可申请撤销注册。在其他情况下，如果有限合伙有偿付能力，则其业务将由普通合伙人或清算人清盘。此后，有限合伙可以申请除名的方式撤销注册。
- 亦包括对资不抵债的有限合伙进行清盘的条文。
- 注册处处长亦可将有限合伙除名（例如，在其不支付相关费用时）。倘若一间有限合伙已被除名连续七年，则该有限合伙将自该七年时间届满的最后一起正式被撤销注册。然而，法院可在七年内恢复被撤销注册的有限合伙。
- 现有的有限合伙将根据现行《合伙法》存续，直至其自愿根据《有限合伙法》重新登记。然而，根据《合伙法》存续的所有有限合伙将在十年后根据《有限合伙法》自动重新登记，并另有两年的时间采纳一项符合规定的有限合伙协议。《有限合伙法》生效后，不得再根据《合伙法》成立新的有限合伙。

The LPA will come into force on such date as will be specified by notice published in the Gazette. Certain steps are required to be carried out to set up the Registry systems. However, it is anticipated that the LPA will come into force in the near future.

《有限合伙法》将在宪报公告中指定的日期生效。虽然设置注册系统仍需进行若干步骤，但预期《有限合伙法》的生效之日将指日可待。

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅！

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ABOUT CONYERS DILL & PEARMAN

Conyers Dill & Pearman is a leading international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. Conyers has over 130 lawyers in eight offices worldwide and is affiliated with the Conyers Client Services group of companies which provide corporate administration, secretarial, trust and management services.

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