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# British Virgin Islands Partnerships

## Foreword

This memorandum has been prepared for the assistance of those who are considering the formation of partnerships in the British Virgin Islands (“B.V.I.”). It deals in broad terms with the requirements of B.V.I. law for the establishment and operation of 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 B.V.I. on their specific proposals before taking steps to implement them.

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

This memorandum has been prepared on the basis of the law and practice as at the date referred to below.

**Conyers Dill & Pearman**

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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.

The principal statute governing the formation and operation of B.V.I. partnerships is the Partnership Act, 1996 (the "Partnership Act").

In some jurisdictions (such as certain U.S. states) statutes concerning partnerships constitute partnerships as legal entities. Under B.V.I. law, a partnership is not a legal entity with any degree of legal personality, but merely a relationship between the partners.

Nevertheless, under B.V.I. law a partnership may function for all practical purposes as an entity. The rules of court permit a partnership to sue and be sued in its partnership name. Sections 7 and 8 of the Partnership Act and the laws of agency empower the partnership to carry on business in its partnership name.

B.V.I. partnership law tends to follow English principles. The Partnership Act substantially codified common law on partnerships, but provides that existing rules of equity and of common law shall continue in force except so far as they are inconsistent with the express provisions of the Partnership Act. Basically, the Partnership Act deals 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 and 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.

Unlike company law, the Partnership Act does not attempt to regulate the affairs of a partnership 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 Act may operate to produce a certain consequence. The partnership agreement is private (except to the extent of information in respect of the Certificate of Limited Partnership).

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”), another kind is where some of the partners have limited liability (“limited partnerships”). Limited partnerships may be either local limited partnerships or international limited partnerships.

## **2. INTERNATIONAL LIMITED PARTNERSHIPS**

An international limited partnership is a limited partnership which cannot carry on business with persons resident in the B.V.I. or own an interest in property situate in the B.V.I. other than a lease of property for use as an office from which to communicate with partners or books and records of the international limited partnership are prepared or maintained.

International limited partnerships may be resident in the B.V.I. and carry on business from the B.V.I. in connection with transactions and activities which are external to the B.V.I. In practice, the activities carried out by international limited partnerships will have no difficulty in meeting this requirement.

### **2.1 Formation and Registration**

There are two steps involved. Firstly, two or more persons desiring to form a limited partnership must execute articles of limited partnership and submit them to the registered agent named in the articles. Secondly, a memorandum of limited partnership must be subscribed by the registered agent and submitted to the Financial

Services Commission (the “FSC”) via VIRRGIN, the online filing system of the Registrar of Corporate Affairs.

The memorandum must include the name of the partnership, the objects and purposes for which the partnership is being established, the address of the registered office of the partnership in the B.V.I., the name and address of the registered agent of the partnership and full details on each of the general partners, the term, if any for which the partnership is to exist, a statement that the partnership is limited together with a statement that every partner not named as a general partner in the memorandum is a limited partner. In the case of an international limited partnership, there must also be a statement that the limited partnership will not carry on certain activities as set out in the Partnership Act.

Upon payment of the prescribed fee, the FSC shall register the Memorandum of Limited Partnership and issue a Certificate of Limited Partnership. The partnership will begin existence on the date shown on the certificate.

If a partnership fails to register itself as a limited partnership, it will be deemed to be a general partnership and every partner will be deemed to be a general partner.

## **2.2 Amendment to Partnership**

The memorandum and articles of limited partnership may be amended as provided for in the articles of limited partnership. Where a change is made with respect to any of the particulars required to be set out in the memorandum of limited partnership, the limited partnership must file a supplementary memorandum with the FSC which will then issue a Certificate of Amendment.

## **2.3 Administration**

The regulation of limited partnerships in the B.V.I. is reasonably straightforward. Each partnership must maintain a registered office and appoint a local registered agent.

A limited partnership must keep such accounts and records as the partners consider necessary or desirable in order to reflect the financial position of the limited partnership.

### **3. LIMITED PARTNERSHIPS**

In addition to the information given above on international limited partnerships, the following applies.

#### **3.1 Name**

A limited partnership is required to use after its name the designation “Limited Partnership” or “L.P.” (which may be used interchangeably). The name of a limited partner must not appear in the name of the limited partnership unless it is also the name of a general partner or unless prior to the time when a limited partner became a limited partner the business of the limited partnership had been carried on under a name in which the name of the limited partner appeared.

#### **3.2 Limitation of Liability**

The limited partners are, subject to the satisfaction of certain requirements, not liable for the debts of the partnership beyond the amounts they have agreed to contribute 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. All suits in respect of the business of a limited partnership can generally only be brought against the general partners.

### 3.3 General Partner

A limited partnership must have at least one general partner. 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 engages in the control of the partnership he will be liable to persons who transact business with the limited partnership reasonably believing that the limited partner is a general partner.

The Partnership Act provides some assistance to the extent to which a limited partner may be involved in a partnership's activities without danger of liability. Provision is made that the limited partner would not be deemed to be engaged in "control" (i.e., not subject to liability to third parties) by reason only of the limited partner being a contractor or agent of a partnership, consulting or advising the general partner, acting as surety or guarantor for the limited partnership, or voting on certain matters, such as the sale of assets or incurring indebtedness otherwise than in the ordinary course of business.

The general partners of a limited partnership must maintain at the registered office of the limited partnership a register in which must be recorded the name and address, amount and dates of contributions of each partner and the amount and date of any payment representing a return of any partners contribution. This register must be updated within 21 business days of any change in the particulars required to be entered therein and constitutes prima facie evidence of such particulars.

The contribution of a limited partner may be cash, property or services.

### 3.4 Dissolution

The general partners of a limited partnership requiring or proposing to dissolve the partnership must approve a plan of dissolution. The limited partnership must then execute articles of dissolution and file them with the FSC. Within thirty days of filing the articles of dissolution, the general partners must also publish a notice stating that

the partnership is in dissolution together with the date of commencement of the dissolution.

#### **4. TAXATION AND GOVERNMENT FEES**

##### **4.1 Taxation**

At the date of this memorandum, there is no estate, inheritance, succession or gift tax, rate, duty, levy or other charge payable by persons who are not resident in the B.V.I. with respect to any interest in an international limited partnership. Further all payments made by an international limited partnership to non-residents of the B.V.I. and any capital gains realised with respect to interests in an international limited partnership by non-residents of the B.V.I. are exempt from the Income Tax Act of the B.V.I.

##### **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.

International limited partnerships are not subject to any stamp duty in the B.V.I.

*This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

### **About Conyers Dill & Pearman**

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The combination of Conyers' structure, culture and expertise enables the highest quality, responsive, timely and thorough legal advice. Conyers' strategic global presence in major international business centres allows a seamless 24 hour service.

Conyers' sophisticated client base includes FTSE 100 and Fortune 500 companies. Working with leading local and international firms, Conyers advises on highly complex multi-jurisdictional projects.

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Founded in 1928, Conyers has 600 staff, including more than 150 lawyers.

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