

Limited Partnership Structure Proving Attractive to Foreign Investors

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Foreign investors considering establishing businesses in Canada increasingly are weighing the merits of structuring their concerns as limited partnerships.

A limited partnership (LP) is a partnership among persons carrying on business in common. It is composed of a general partner (or partners) and one or more limited partners. The limited partners benefit from limited liability.

In an LP, management is conducted by the general partner(s), who is/are fully liable for all debts, liabilities, and obligations of the LP. The liability of the limited partners is restricted to the amount of money or interest they have invested in the LP.

LPs are not separate legal entities and, as such, they present potential tax advantages compared to those offered by structures involving corporations. These advantages include the ability to “flow through” losses. For these reasons, LPs are the chosen vehicle for raising capital for business ventures susceptible to initial losses.

General Partner

A minimum of one general partner is required to create an LP. The general partner is responsible for making decisions on behalf of the LP. As such, general partners also have unlimited personal liability for the debts and obligations of the LP. Despite this, if detailed in the LP agreement, the general partner may still assign a manager to oversee business operations.

A general partner may be, and usually is, a corporation. However, if incorporated outside of Canada, the corporation must first be registered extra-provincially in Ontario before the LP can be established.

Within a single LP, a person (including a corporation) can be the general and limited partner simultaneously, thus requiring only one person for its registration. In this case, the partner will

be subject to the same rights, powers, restrictions, and liabilities of a general partner but will also attract the rights and benefits of a limited partner.

Limited Partner

Every LP must have at least one limited partner (who is either an individual or a legal entity). As a limited partner, one may contribute financial input and backing to support the business and partnership creation without becoming liable for the financial debts of the LP. An individual's personal assets may not be claimed to satisfy a business' liabilities. Therefore, the liability of a limited partner is restricted to the amount of the contribution offered by such limited partner.

In exchange for significant protection against liability, limited partners must forfeit certain managerial powers. Notwithstanding s. 12(2)(b) of the *Limited Partnerships Act*, Limited partners are not recommended to act as agents on behalf of the LP, as the risk of triggering a loss of limited liability is great. Limited partners cannot make unilateral business decisions, and their contributions cannot be in the form of services; only money and/or property.

While limited partners may occasionally examine the state of the LP and its management, this intervention cannot be seen to amount to controlling the LP. Limited partners are, however, permitted to act as employees, sureties, or contractors for the LP without compromising their limited liability.

Residency Requirements

Canadian residency is not required for a person to be a general partner or a limited partner. Additionally, when a non-Canadian corporation is acting as a limited partner, it is not required to complete extra-provincial registration in Ontario.

Contributions

There is no minimum contribution requirement in an LP. Some LP agreements, however, may necessitate additional capital contributions from limited partners.

Formation and Filing

In Ontario, the *Limited Partnership Act* (LPA) provides the statutory framework that governs LPs in the province. Under the LPA, there are two key requirements for creating an LP:

1. Typically demonstrated through a written agreement, the business relationship between parties must constitute a partnership under the LPA definition; and
2. An LP declaration must be filed with the Registrar appointed under the *Business Names Act*.

To renew an LP, payment of a renewal fee every five years is required.

Record Keeping

When registering an LP, the declaration must include the address of the LP's principle place of business in Ontario. An LP is required to keep accessible records of its partners, the LP agreement, copies of all resolutions, and any other relevant documents. Every partner is entitled to access to the books and records during normal business hours of the LP.

Limited partners are liable for any discrepancy in the records between their actual contribution and their stated contribution.

Upon the dissolution of an LP, the LP must file a declaration of dissolution with the Registrar under the *Business Names Act*.

Naming

During formation, an LP must be given a legal name which includes a legal element, such as Limited Partnership or LP. This name cannot include the surname or a distinctive part of the corporate name of a limited partner, or they will be liable to the same extent as a general partner. While the name of the LP may be in English and/or French, it cannot include any restricted words (e.g. bank, trust, etc.)

Taxes

An LP is not considered a separate taxable entity under the *Income Tax Act* (Canada). Therefore, it is not required to pay income taxes or file a corporate income tax return. Instead, all profits received by an LP are passed through the LP. Profits and losses are then allocated among the partners of the LP at the end of the fiscal year, in accordance with the terms of the LP agreement governing the LP's business and affairs.

Partners who are Canadian residents are required to include their part of the profit received through the LP in their personal/corporate tax returns. Partners who are not Canadian residents are not subject to withholding tax on the profits they receive from the LP.

LPs have no audit requirements.

Conclusion

There are multiple advantages to establishing an LP to conduct business:

1. LPs are viewed as highly prestigious Canadian business entities;
2. LPs have no restrictions on the residency of partners, thus allowing non-residents to contribute to the partnership;
3. An LP can be composed of a single person who is the sole general and limited partner, or can be expanded to include the contributions of multiple partners;
4. There is no minimum authorized capital to an LP. Therefore, partners can make any contribution;

5. LPs can “flow through” profits and losses to their partners; and
6. In terms of taxation, there is no corporate income tax, no requirement to file corporate tax returns, and no withholding tax on profits received by partners situated outside of Canada.

Establishing an LP requires a thorough understanding of the numerous components briefed in this summary, as well as meticulous attention to the various considerations relevant to your specific business. To ensure a diligent and efficiently managed process, individuals and corporations seeking to create an LP are encouraged to retain the services of Blaney McMurtry LLP.

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