

## KEY FACTS

# LIMITED LIABILITY PARTNERSHIPS

BRITISH COLUMBIA LIMITED LIABILITY PARTNERSHIPS (LLPS) ARE DISTINGUISHABLE FROM LIMITED PARTNERSHIPS (LPS) IN THAT THEY OFFER THE BENEFIT OF LIMITED LIABILITY FOR THE PARTNERS BUT DO NOT REQUIRE THE APPOINTMENT OF A GENERAL PARTNER.

British Columbia is the only Canadian province that does not limit the use of LLPs to the conduct of professional services (for example, a law or accounting firm).

LLPs, like LPs, are recommended by professional advisors as an ownership structure for non-Canadian clients with cross-border investments. The decision as to which type of partnership should be selected normally will be determined by the business activities in which the partnership will be engaged.

### ADVANTAGES

The main advantages of an LLP include:

- > Protection afforded by Canadian laws and courts
- > Treatment by Canada as a flow-through entity for fiscal purposes
- > Favorable treatment under Canadian tax treaties
- > No restrictions on the residency of partners
- > No minimum authorized capital requirements
- > No need for the appointment of a General Partner

### FORMATION

In order for a partnership to be recognized as an LLP, it will file a Registration Statement with the BC Business Registry in a prescribed form.

The information required to be supplied in the Registration Statement includes:

- > The name of the LLP
- > The physical address and address for service of the LLP
- > Confirmation that the partners have approved the filing of the Registration Statement

The name of the LLP when approved by the Registrar must end with the words, "Limited Liability Partnership" or the abbreviation "LLP".

As is the case with limited partnerships organized in most common-law countries, it is possible to provide, through a written agreement of partners, for allocations of income and/or deductions to be treated differently. It is also possible to appoint a managing partner of the partnership.

The Registration Statement is of public record and searchable.

The names of the partners in the LLP do not need to be registered or disclosed. However, the LLP must make available for inspection the list of its partners upon request by any person.

## ACCOUNTS AND AUDIT

LLPs are required to keep records of the partnership's financial transactions in sufficient detail to enable the financial position of the LLP to be determined at any time. The accounts of the LLP do not need to be audited. There also is no requirement for the LLP's financial accounts to be filed with the BC Corporate Registry. Those requirements would apply if the LLP is a public issuer.

## ANNUAL REPORTS

An LLP is required, within two months after the anniversary of its registration, to file an annual report with the BC Corporate Registry.

## TAXATION

LLPs are not considered a separate taxable entity in Canada at either the federal or provincial level.

The LLP will not be subject to any Canadian income taxes and may not be required to file a Canadian income tax or information return where:

- > The LLP does not carry on business in Canada;
- > The management and control of the LLP is conducted outside of Canada; and
- > The LLP is not in receipt of any Canadian income.

There are no audit requirements for LLPs.

Currently LLPs are most frequently used to hold investment portfolios for individuals who are tax resident in countries with double-tax treaties with Canada. Those treaties normally provide for an elimination of Canadian withholding taxes and a flow-through of profits and losses to the partners of the LLP, allocated in accordance with the terms of the partnership agreement. In addition, no Canadian withholding tax would apply on non-Canadian source income.

An LLP can elect to be a corporation for US tax purposes by filing an election with the IRS to block the federal estate tax that otherwise would apply to US situs assets.

The provisions of the Canada-US tax treaty to reduce US withholding tax will depend on the terms of the treaty and whether or not the LLP has made an election to be taxed as a corporation in the US.

LLPs are also used by residents of a number of Latin American countries for estate tax and income tax deferral purposes as permitted under the laws of the relevant countries.

Professional advice regarding the application of Canadian tax or the application of tax treaties to the income of the LLP should be obtained.

### Important Note

The limited liability protection enjoyed by a partner in an LLP will be removed if (i) that partner engaged in a negligent or wrongful act or omission, or (ii) that partner was aware of a wrongful act or omission committed by another partner and did not take the actions that a reasonable person would take to prevent it. In addition, partners in an LLP are liable for a partnership obligation if and to the same extent they would be liable as directors of a company for an obligation of that company.

## FATCA AND CRS

Canada is a party to an Inter-Governmental Agreement (IGA) with the United States as authorized under the provisions of the US Foreign Account Tax Compliance Act (FATCA). Canada is also a signatory to the Organization for Economic Growth Co-Operation and Development's (OECD's) Common Reporting Standards (CRS).

LLP partners who are US citizens or residents should not be subject to reporting by Canada under FATCA as they will be reporting their income, losses and gains attributable to the LLP to the US Internal Revenue Service (IRS).

The nature and extent of reporting under CRS of the income of LLPs who are not US citizens or residents and who are resident in a CRS participating jurisdiction in general will be determined by (i) the tax residency of the partners, (ii) the location and nature of the assets held by the LLP, and (iii) the characterization of the LLP under their respective domestic laws.

Professional advice regarding the application of FATCA and CRS to the partner of a LLP should be obtained.

#### HOW TRIDENT CAN ASSIST YOU IN CANADA

Our Vancouver office provides the following LLP establishment and maintenance services:

- > Formation of the LLP through dedicated local counsel
- > Providing professional intermediaries with appropriate statutory documents including a limited liability partnership agreement template
- > Serving as the LLP's registered agent
- > Maintaining the LLP in good standing in the province of British Columbia
- > Coordinating any related work in other jurisdictions within Canada

If you are interested in our LLP service, please contact us as follows:

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