

INTRODUCTION OF THE TAIWAN LIMITED PARTNERSHIP ACT

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Corporate/M&A Alert

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On June 24, 2015, the new Limited Partnership Act (有限合夥法, the Act) was announced by President Ma Ying-jeou and will become effective on a date to be set by the Executive Yuan. The Act allows the establishment of a limited partnership in Taiwan, an action which grants enterprise operators and passive investors the opportunity to make use of a new legal structure.

Similar to a limited partnership in other jurisdictions, a Taiwan limited partnership must have at least one general partner and one limited partner. The general partner(s) is jointly and severally responsible for the debts and obligations of the limited partnership if and when such partnership becomes insolvent; a limited partner is generally not personally liable for the debts of the partnership unless it takes part in conducting the partnership's business. A unique feature of a Taiwan limited partnership is that the partnership is a legal person and has its own legal capacity to own properties and incur debts and liabilities.

ESTABLISHMENT OF A TAIWAN LIMITED PARTNERSHIP

A limited partnership will be set up by registration of the following with the Taiwan authorities:

- name
- business
- address
- name, address and capital commitment of the partners
- capital contribution upon establishment
- duration of the partnership
- legal representative and manager of the partnership
- other information as required by the authorities.

The capital contribution of a general partner can be made by cash, assets or other items of value (e.g. credit, services, etc.), while the capital contribution of a limited partner can be made by cash or assets only. The capital contribution can be made on a call basis. However, it will be subject to verification by a certified public accountant if the aggregate capital amount or the number of partners reaches the limits set by the authorities.

PARTNERSHIP INTEREST

Unless otherwise provided in the limited partnership agreement, the general partner may admit additional limited partners to the partnership. The general partner may with the consent of all partners admit an additional general partner to the partnership, and that new general partner will be liable for obligations of the partnership incurred prior to the time of their admission.

A partner may transfer its partnership interest with respect to its capital contribution to a third party upon receiving the unanimous consent of all other partners, or through the ways as permitted under the limited partnership agreement. A partner is not permitted to withdraw its interest from the partnership unless otherwise provided in the limited partnership agreement; however no withdrawal should be permitted if it will affect the ability of the partnership to perform its outstanding obligations.

Generally each partner should have one vote regardless of its interest in the partnership. The limited partnership agreement however may provide that the voting power of each partner be linked to its capital commitment.

MANAGEMENT OF A TAIWAN LIMITED PARTNERSHIP

Under the Act, the general partner, or if there is more than one, the representative selected by the general partners, will have the authority to act on behalf of the partnership. The general partner owes fiduciary duties to the partnership and is liable jointly and severally with the partnership for losses suffered by a third party resulting from violations of law by the partnership.

Where there is a potential conflict of interest between the general partner and the partnership, the general partner should refrain from acting on behalf of the partnership. The partnership should instead grant authority to a representative selected by the other general partner(s), if any, or a representative elected by the limited partners when there is only one general partner, to act on behalf of the partnership.

A general partner who acts as the representative of the partnership should not engage in business that is similar to that of the partnership unless the limited partnership agreement waives this restriction. A violation of this non-competition obligation will entitle the partnership to the interests received by such general partner from the relevant activities if so resolved by a majority of all the other partners.

A limited partner should refrain from taking part in conducting the business of the partnership; otherwise it will be liable for the obligations of the partnership in such dealings as though it were the general partner. A limited partner however will not be held liable to a third party for providing consultation services or advice in connection with the business of the partnership, or for acting as an authorized agent of the partnership on a specific matter, or for providing a guarantee for the benefit of the partnership or the general partner.

FISCAL AFFAIRS, DISTRIBUTIONS AND DISSOLUTION

The general partner should provide each partner with the annual business report and financial statements and seek approval of such business reports and financial statements from no less than two-thirds of the partners at the end of each fiscal year. The financial statements should be audited if the capital of the partnership exceeds a

certain amount set by the authorities. A proposal for allocation and distribution of gains or losses should also be submitted and acknowledged by the partners at the end of each fiscal year unless otherwise provided in the limited partnership agreement with respect to the timing of profit distribution.

Unless otherwise provided in the limited partnership agreement, profits of the partnership should be distributed among the partners in proportion to their respective capital contributions. No distribution should be made if such distribution would cause the partnership to become insolvent or unable to pay the necessary costs for dissolution and liquidation of the partnership.

A limited partnership will be wound up and dissolved upon:

- occurrence of any termination event as provided in the limited partnership agreement, unless waived by a unanimous vote of the partners;
- expiration of the partnership's term, unless extended by a unanimous vote of the partners;
- a unanimous vote of the partners;
- bankruptcy; or
- no limited partner or general partner remaining.

GOING FORWARD

Some details about the rules are still subject to implementation rules to be promulgated by the authorities, including the capital contribution by means of credit or services, the verification of capital contributions and the auditing of financial reports. It may be also worth noting the following:

- **Confidentiality:** Most information registered with the authorities (save for names of the limited partners) is a matter of public record. Although the limited partnership agreement filed with the authorities will only be available for review by an interested party, there may be concerns about the confidentiality of a Taiwan limited partnership.
- **Tax:** This Act took more than a decade to go through the legislative process, and one of the key issues that delayed the process was preferential tax treatment. While the government finally decided to enact the bill first and tax the limited partnership the same way it would tax a Taiwan company, it plans to look into the possibility of preferential treatment on business tax in the future so as to further promote a better environment for entrepreneurs.

KEY CONTACTS



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