



INTERCONTINENTAL TRUST

International Tax & Management Services

INTERCONTINENTAL TRUST NEWSLETTER

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INTRODUCTION OF LIMITED PARTNERSHIPS IN MAURITIUS

The Limited Partnership Bill has received Parliamentary assent on 18 October 2011. Upon the said Bill receiving Presidential Assent and being duly Gazetted, the option of setting Limited Partnership/s will be available to all players/ investors wishing to structure their investments through Mauritius.

“The introduction of this legislation is a further step towards the continuous innovation and modernization of the financial offerings of Mauritius as a lead financial center of substance in the African region” (Board of Investment, Mauritius).

This bill, as approved by the National Assembly, aims at reinforcing the use of Mauritius as a platform, especially by Private Equity Funds, to invest in the African and Asian countries.

PART 1: LIMITED PARTNERSHIPS

What is a Limited Partnership?

A Limited Partnership is a perfect blend of a partnership with private limited company setup. A Limited Partnership gives owners the flexibility of operating as a partnership while having a separate legal identity like a private limited company. For investors, this type of structure is mainly used for collective investment purposes (such as Private Equity Funds), holding assets, trading and family wealth structuring. This type is also suitable for individuals engaged in professional services such as lawyers, architects, accountants and management consultants. A Limited Partnership is a special form of partnership that has both limited and general partners.

General Partners are partners in a Limited Partnership who invest capital, manage the business and are personally liable for partnership debts.

Limited Partners are partners in a Limited Partnership who invest capital but do not participate in management and are not personally liable for partnership debts beyond their capital contributions.

Features of a Limited Partnership

The Bill, once Gazetted, will provide that the key terms of the Limited Partnership will be subject to the Limited Partnership agreement. However, the proposed law shall prevail whenever the Limited Partnership agreement is silent on any particular issue.

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Key features of a Limited Partnership:

- Limited liability concept, where it has the ability to limit both the liability risk and the business involvement of certain partners;
- Allows the Limited Partnership agreement to regulate the terms of the partnership;
- Limited Partnerships must have a partnership agreement and maintain:
 - A register of partners;
 - An account of capital contributions and returns;
 - Accounting records;
 - Minutes of meetings of the General Partners;
 - Copies of all documents filed with the Registrar.
- Requires at least one General Partner and one Limited Partner;
- Requires at all times to have and maintain a Registered Agent in Mauritius, unless the General Partner is resident or incorporated in Mauritius;
- Can elect to be tax neutral, i.e. income would be taxed in the hand of the partners;
- No withholding tax on distributions to investors;
- Possibility for Foreign Limited Partnerships to be migrated and continued in Mauritius;
- Access to network of Double Taxation Avoidance Treaties;
- Can hold a Global Business Licence Category One or Two;
- May be formed in Mauritius to carry business within Mauritius or elsewhere;
- Unless otherwise specified in the partnership agreement, a Limited Partnership shall have a continuous and successive existence, allowing limited partners to leave and to be replaced and continuance after death of a General Partner;
- Can elect to have a separate legal personality at registration or at a later stage;
- Name of the Limited Partnership should include the words “Limited Partnership” or the abbreviation “L.P”.

Who can be a General Partner or Limited Partner?

A General Partner (“GP”) or a Limited Partner (“LP”) can be an individual, a body corporate or an unincorporated body, formed or registered with or without liability in Mauritius or elsewhere, including any société or partnership or any other body of person.

A Limited Partnership may consist of one or more GPs who at the same time can be an LP in the same Limited Partnership. Each GP is an agent of the Limited Partnership and his acts shall bind the Limited Partnership in all respects. In addition, every GP will be jointly and severally liable for all debts of the Limited Partnership without limitation.

A Limited Partnership may consist of one or more LPs whose liability is limited to the capital contributed or agreed to be contributed in the Limited Partnership. An LP cannot execute documents on behalf of the Limited Partnership nor bind the Limited Partnership. In addition, an LP cannot participate in the conduct of management of the business of a Limited Partnership.





PART 2: INFORMATION TABLE

Summary of the features of a Global Business Company (“GBC”) to that of a Limited Partnership.

	GLOBAL BUSINESS COMPANY		LIMITED PARTNERSHIP		
	1	2	GBC 1	GBC 2	DOMESTIC
Registered office in Mauritius	Yes	Yes	Yes	Yes	Yes
Legal personality	Yes	Yes	Optional	Optional	Optional
Access to Double Tax Treaties	Yes	No	Yes	No	Yes
Registered Agent	N/A	Yes	Yes	Yes	Yes
Company Secretary	Yes	Optional	N/A	N/A	N/A
Annual Meeting	Yes	Not required	N/A	N/A	N/A
Obligation to prepare Audited Financial Statements	Audited Financial Statements within 6 months of balance sheet date	Only a Financial Summary needs to be prepared within 6 months of balance sheet date	Audited Financial Statements within 6 months of balance sheet date	Only a Financial Summary needs to be prepared within 6 months of balance sheet date	Audited Financial Statements within 6 months of the balance sheet date (only Financial Summary required for small Limited Partnerships)
Tax status	Taxed at 15% with a maximum effective rate of 3%	Tax Exempt	Not liable to income tax - unless opt to be taxed as a company in Mauritius - maximum effective tax rate 3%	Not liable to income tax	Not liable to income tax
Filing of Tax Return	within 6 months of balance sheet date	Tax Exempt	If elect to be taxed, submission date within 6 months after balance sheet date. In any other case, not later than 31 March.	N/A	Not later than 31 March
Filing of annual return with the Registrar	N/A	N/A	Yes - during the month allocated by the Registrar	Yes - during the month allocated by the Registrar	Yes - during the month allocated by the Registrar
Re-domiciliation	Allowed	Allowed	Allowed	Allowed	Allowed

PART 3: VARIANTS IN LIMITED PARTNERSHIPS

One of the most interesting aspects of a Limited Partnership is that it can be tailor-made. Endless combinations of various features can be mixed to provide the most tax-efficient and legal structure to its partners.

Some of the variants are as follows:

Limited Partnership with a Separate Legal Personality

A Limited Partnership can elect to have a separate legal personality. This means that the Limited Partnership has the full capacity in terms of rights, powers and privileges to enter into any activity and being capable of suing and being sued in its own name.

Any partnership property is then held by the Limited Partnership itself and not by the GPs.

Limited Partnership with a No Separate Legal Personality

Where no election is made, a Limited Partnership is deemed to have no separate legal personality. This means that the Limited Partnership is not distinct and separate from its owners. Hence, no court judgement can be enforced against the Limited Partnership.

Any partnership property is then held by the GP.

Limited Partnership with an Opaque tax structure

It is possible for a Limited Partnership to elect to be liable to income tax at 15% in Mauritius and as such, the Limited Partnership will be 'opaque' for tax purposes. The Limited Partnership will have a separate capacity from its owners under the tax point of view and will be taxed in Mauritius instead of the Partners.

The Limited Partnership will also benefit from Foreign Tax Credits. Where the Limited Partnership holds a GBC 1 Licence, it will benefit from deemed foreign tax credit of 80%, thus being subject to a maximum effective income tax rate of 3% only. Capital Gains are tax exempted in Mauritius.

This is an important tax-planning tool since a simple election can transfer the tax liability from the partners to the Limited Partnership especially when different tax jurisdictions are involved.

Limited Partnership with a transparent tax structure

When no election is made, a Limited Partnership is deemed to be a transparent entity for tax purposes. The Limited Partnership shall not be liable to income tax in Mauritius.

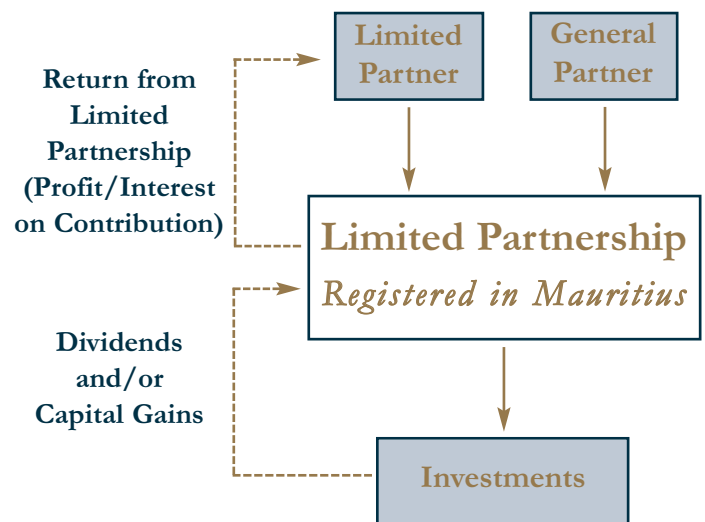


Figure 1: an illustration of a Limited Partnership with a tax transparent structure.

Limited Partnership structured as a Fund

A Limited Partnership can be structured as a Fund. The Limited Partnership will need to apply for licence to operate as a Fund from the Financial Services Commission (“FSC”).

Limited Partnerships are commonly used in Private Equity Fund structures because of their flexibility of being governed by terms and conditions set forth in the Limited Partnership agreement. In a company, all the investors in a particular share class share the same rights whereas in a Limited Partnership, the Limited Partnership agreement can provide that one or more of the LPs have greater rights than the other LPs.

In the investment period or early stages of a Private Equity Fund, the Fund may be making losses and may require that additional funds be injected by the LPs.

The Fund set up as a Limited Partnership will facilitate this process pursuant to the partnership agreement and gives the Limited Partnership the flexibility to set off the tax losses of the Fund against its profits.

The Private Equity Fund set up as a Limited Partnership could include Special Purpose Vehicles (“SPVs”) between the Fund and the target companies in order to take advantage of being a tax transparent structure while also enjoying the tax treaty benefits that Mauritius has with a number of countries.

In a nutshell, the Limited Partnership structure in addition to providing Fund managers the flexibility for arranging different terms and conditions with different LPs, also provides greater opportunities for establishing a tax efficient structure.

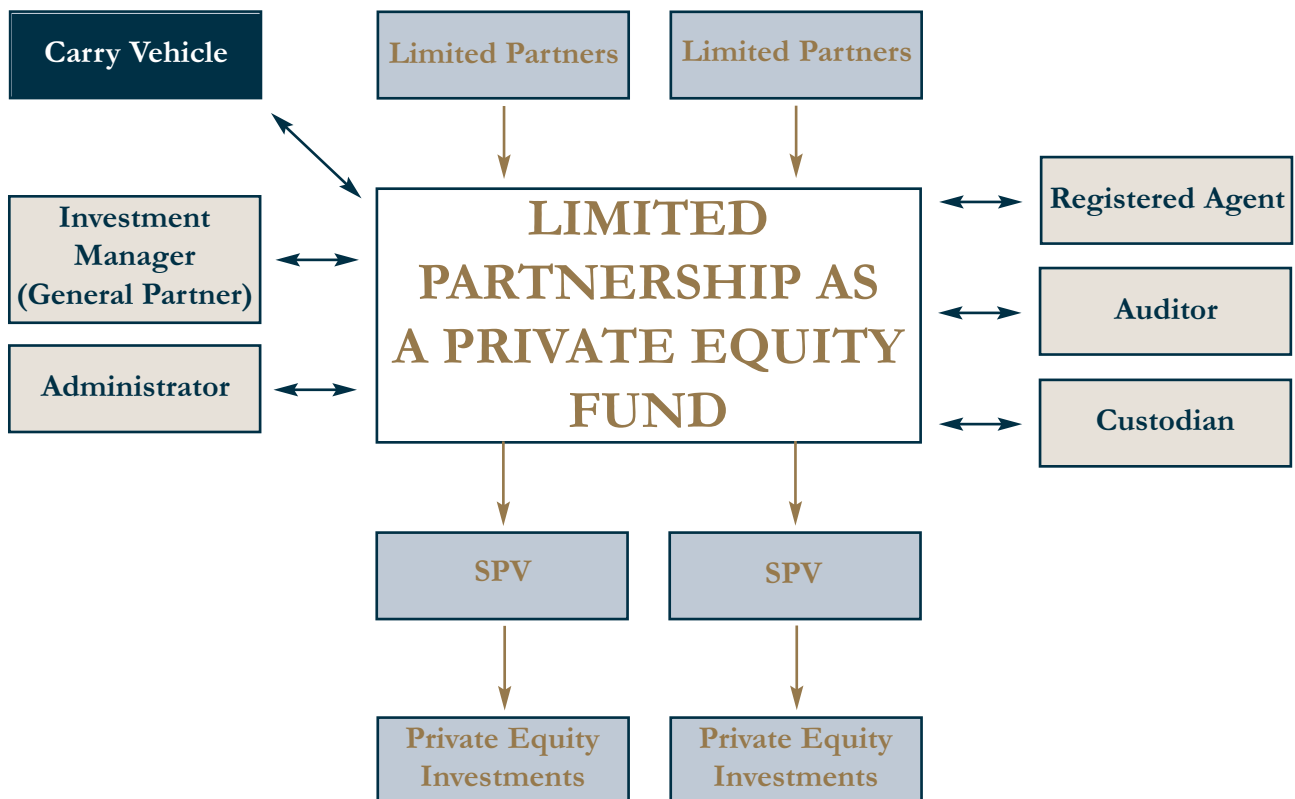


Figure 2: an illustration of a Limited Partnership structured as a Fund.



PART 4: ADVANTAGES OF USING MAURITIUS



Mauritius as a platform for cross border transactions

A Mauritius Limited Partnership can be used as a vehicle for cross border transactions with which Mauritius has favourable tax treaties whilst enjoying a nil or low tax rate. In the same vein, the Mauritius Limited Partnership can benefit from the Investment Promotion and Protection Agreements (“IPPA’s”) which Mauritius has with a number of countries.

Time zone differences

Strategic time zone, between Europe and Asia (GMT +4 hours).

Political Stability and well defined Regulation

Political stability is a factor which attracts investors. Mauritius, being politically stable, offers a well-defined system of regulation for the setting up and proper functioning of a Limited Partnership. Mauritius has been involved in Global Business activities for over 20 years.

Banking and Workforce

The well-developed banking and legal sector is conducive to the applicant’s business. Furthermore, Mauritius has a suitable workforce to promote back-office capabilities.

Withholding tax

There is no withholding tax in Mauritius on distributions to investors.

PART 5: MAURITIUS RE-DOMICILIATION

A Foreign Limited Partnership set up under the laws of any country other than Mauritius, may, where it is so authorised by law of that country, apply to the Registrar to be registered as, and continue as, a Limited Partnership in Mauritius as if it has been set up in Mauritius.

PART 6: SETUP PROCEDURE

In considering the application, the FSC needs to be satisfied of the following:

- the track record and credentials of the promoters;
- the structure;
- the objectives of the Limited Partnership;
- types of activity or investments and;
- track record of the GP.



Step	Description	Limited Partnership		
		SPV	Fund	Domestic
1	<p>Name Reservation</p> <p>A shortlist of names for the Fund / SPV will be requested and name availability will be checked with the Registrar of Companies in Mauritius (“ROC”). If available, a name reservation will be made and a notice of name reservation will be issued by the ROC. A name may be reserved for a period of 2 months.</p>	Yes	Yes	Yes
2	<p>Gathering documents</p> <p>Full details of the Promoter/ Sponsor/ Beneficial Owner, LPs, Collective Investment Scheme (“CIS”) manager (the GP), Custodian (if any), Administrator, among others have to be disclosed.</p>	Yes	Yes	Yes
3	<p>Preparation of structure paper/business plan</p> <p>A Structure Paper must be prepared and submitted to the FSC. This will contain the essential information on the structure, management and ownership of the Fund. For an SPV, the business plan must contain information on the beneficial owner, proposed activities, the initial investment/flow of funds and expected return/turnover for the 1st three years.</p> <p>Structure chart should also be attached to the business plan.</p>	Yes	Yes	Yes
4	<p>Drafting of agreements</p> <p>Limited Partnership Agreement</p> <p>For Funds only: Prospectus / Private Placement Memorandum; Investment Management Agreement (if any); Custodian Agreement (if any); Administration Agreement.</p>	Some	Yes	Some
5	<p>Application to FSC and ROC</p> <p>The application process would involve sending the application pack and all the declarations, undertakings and letters of authority required as per the FSC regulations to the FSC. It will also involve various correspondences and answering all queries the FSC may have. This could take a few weeks after which it may issue the licence. After receipt of the FSC’s approval, the ROC will proceed with the registration of the Limited Partnership and issue the Certificate of Registration.</p>	Yes	Yes	ROC only
6	<p>First General Partner meeting</p> <p>The first meeting is held to ratify all the declarations and undertakings given to the FSC, approve the execution of the agreements, authorise the opening of bank account and application for Tax Residency Certificate (“TRC”). A copy of the executed agreements is then filed with the FSC.</p>	Yes	Yes	Some
7	<p>Application for TRC and Opening of Bank Account (if applicable)</p> <p>Tax Residence Certificates are applied with the FSC and bank account opening documents are sent to the appointed bank / custodian.</p>	Yes	Yes	No



Time Table

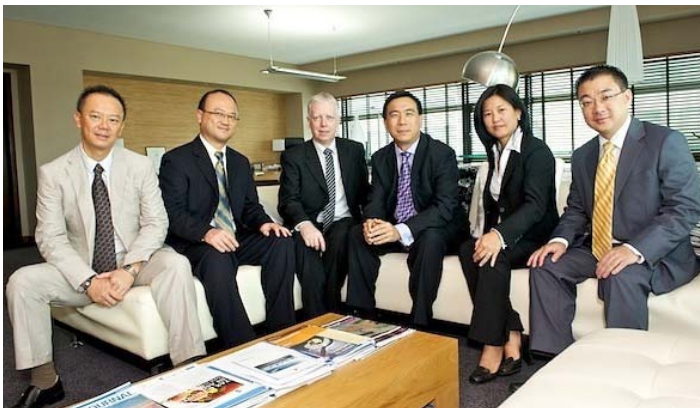
Provided all of the agreements/documents are in draft form and customer due diligence (“CDD”) are readily available, the following estimated time-scale can be achieved.

Limited Partnership timelines (estimated)

Steps	Weeks			
	GBC1 SPV	GBC2 SPV	Fund	Domestic
1-5	3	1	6	2
6-7	1	1	1	1

After Step 6, the Limited Partnership or SPV is ready to commence operations.

PART 7: OUR SERVICES



Intercontinental Trust Ltd (“ITL”) is licensed by the Financial Services Commission in Mauritius to provide a comprehensive range of financial and fiduciary services to international businesses.

ITL will act as the Registered Agent to the Limited Partnership.

The following are the services offered:

Registration of the Limited Partnership

- Advise on structuring, Mauritian regulatory and taxation aspects;
- Assist and liaise with a Mauritian Legal Counsel on the review of the Partnership Agreement;

- Prepare and review all documents at the different stages for the registration of the partnership;
- Assist in the preparation and review of documents in the event the Limited Partnership will need to apply for a special licence with the Financial Services Commission.

Registered Agent Services

- Maintain all statutory registers such as Register of Partners, etc;
- Capital Contribution of each LP;
- Accounting records;
- Minutes of Meeting of GPs;
- Liaise with the authorities whenever there are changes to the constitution of the Limited Partnership;
- Assist in preparation and filing of Annual Returns;
- Assist in arranging for meeting of Partners;
- Provision of Registered office;
- Liaise with external regulators.

Accounting and Tax Services

- Assist in the preparation of the management accounts and redrafting same in the format as required by the Law;
- Liaise with auditors when needed;
- Apply for a Mauritius Tax Residency Certificate (if applicable);
- Assist in the preparation of tax returns for resident partners.

Set up of Mauritius General Partner

The GP may be incorporated, formed or registered under the laws of Mauritius.

ITL will assist in the formation and administration of the Mauritius GP, which includes obtaining the required licences if needed.



APPENDIX A: DOUBLE TAX TREATY AGREEMENTS

So far Mauritius has concluded 36 tax treaties that are in force and is party to a series of treaties under negotiation. Most of the treaties in force have been in existence as from the period when Mauritius launched its global business sector in 1992. Copies of the agreements are available upon request.

Year		Country	Dividends (a)	Interest	Royalties (b)	PE if building site lasts more than (months)
Signed	Ratified					
1981	1982	France	5 /15 (c)	(f)	15	6
1983	1985	India	5 /15 (c)	(f)	15	9
1978	1987	United Kingdom	10 /15 (c)	(f)	15	6
1992	1990	Germany	5 /15 (d)	(f)	15	6
1992	1992	Sweden	5 /15 (c)	15/0(h)	15	6
1993	1992	Zimbabwe	10 / 20 (d)	10/0(h)+	15	6
1993	1993	Malaysia	5 / 15 (c)	15	15	6
1994	1994	Swaziland	7.5	5	7.5	6
1990	1995	Italy	5 /15 (d)	(f)	15	6
1994	1995	China	5	10	10	12
1994	1995	Madagascar	5 /10	10	5	6
1994	1995	Pakistan	10	10	12.5	6 in any 12
1995	1996	Botswana	5 /10 (d)	12	12.5	6
1995	1996	Luxembourg	5 /10 (c)	0	0	6
1995	1996	Namibia	5 /10 (d)	10/0 (h)	5	6
1995	1996	Singapore	0	0	0	9
1996	1997	South Africa	5 /15 (c)	0	0	9
1996	1997	Sri Lanka	10/15 (c)	10/0	10	6
1997	1998	Kuwait	0	5	10	9
1997	1998	Thailand	10	10/15(h)	5/15 (g)	6
1998	1998	Oman	0	0	0	6
1995	1999	Belgium	5 /10(c)	10/0 (h)	0	6
1997	1999	Mozambique	8 /10(d)/15	8/0(h)	5	6
1999	1999	Nepal	5/10(i)/15	10/15(h)	15	6 in any 12
2000	2001	Cyprus	0	0	0	12
2001	2003	Rwanda	0	0	0	12
2002	2003	Croatia	0	0	0	12
1997	2004	Lesotho	10	10	10	6
2002	2004	Senegal	0	0	0	9
2003	2004	Uganda	10	10/0(j)	10	6
2004	2005	Barbados	5	5/0	5	6
2005	2005	Seychelles	0	0	0	12
2007	2007	United Arab Emirates	0	0	0	12
2008	2008	Qatar	0	0	5	6 in any 12
2008	2010	Tunisia	0	2.5	2.5	12
2009	2010	Bangladesh	10	Same rate as per domestic law	Same rate as per domestic law	12

NOTES:

- (a) Dividends derived from Mauritius are tax free.
- (b) Royalties derived from Mauritius global business companies are tax free.
- (c) Lower rate applies to companies holding at least 10% of capital.
- (d) Lower rate applies to companies holding at least 25% of capital.
- (e) 5% in the case of an investment of at least US\$ 500,000.
- (f) Interest taxed in source country according to local law. 0% if paid to any bank carrying on a bona fide banking business.

However, there is no withholding tax in Mauritius on interest paid by an global business company.

- (g) Lower rate applies to companies holding at least 20% of capital.
- (h) Lower rate applies if paid to any bank carrying on a bona fide banking business.
- (i) Lower rate applies to companies holding at least 15% of capital.
- (j) If paid to any institution owned by the Government.

+ *in respect of payments made to a bona fide bank and in the case of Zimbabwe, only if approved by the Zimbabwean Minister of Finance.*

Treaties with the following countries await ratification:

Republic of Congo	Russia
Germany (<i>Renegotiated</i>)	Zambia

Treaties with the following countries await signature:

Egypt	Malawi
Ghana	Nigeria
Kenya	



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Treaties are being negotiated with the following countries:

Algeria	Portugal
Burkina Faso	Republic of Iran
Canada	Saudi Arabia
Czech Republic	St Kitts & Nevis
Greece	Yemen
Monaco	Vietnam



Intercontinental Trust Ltd is regulated by the Financial Services Commission in Mauritius.

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