

# Incorporated limited partnerships

Incorporated Limited Partnerships (ILPs) are legal entities which can be set up under most State and Territory partnership legislation. ILPs appear to be the preferred entities to use when applying for registration of a limited partnership for venture capital purposes under Commonwealth legislation.

NSW Fair Trading administers the registration arrangements for ILPs under the NSW partnership legislation (*Partnership Act 1892*, Partnership Regulation 2007).

## Venture capital

Venture capital is an important source of funds for start-up companies, expanding businesses and restructuring businesses. Venture capital is high risk as it provides funding to companies at difficult stages in their development where the risk of failure is greatest. Venture capital programs attempt to prevent this failure by working with the management of investee companies through the growth phase.

## Limited partnerships for venture capital

Since 2002, the Commonwealth enacted legislation to establish four forms of limited partnerships to be used as a structure for venture capital investment. The four types of limited partnership created by these Acts are:

- Venture Capital Limited Partnership (VCLP)  
VCLPs invest directly in companies.
- Early Stage Venture Capital Limited Partnership (ESVCLP)  
ESVCLPs invest into eligible entities with total assets of not more than \$50 million before the investment is made.
- Australian Venture Capital Fund of Funds (AFOF)  
AFOFs invest either indirectly through VCLPs or ESVCLPs, or directly. Direct investments by AFOFs must meet specific requirements.
- Venture Capital Management Partnership (VCMP)  
VCMPs, according to the *Income Tax Assessment Act 1936 (Cwth)*, can only be involved in the management of these other bodies.

## Concessional tax treatment

To obtain concessional tax treatment under the Commonwealth legislation the venture capital limited partnerships must be registered under the *Venture Capital Act 2002 (Cwth)*.

## International consistency

The Commonwealth legislation was designed to align the Australian tax regime applicable to venture capital investment structures with that of most other developed countries.

## Registration of Incorporated Limited Partnerships (ILP) in NSW

NSW Fair Trading is responsible for administering the Register of limited and incorporated limited partnerships under the NSW partnership legislation.

## Background to Incorporated Limited Partnerships (ILP)

In 2004, NSW enacted the *Partnership Amendment (Venture Capital Funds) Act 2004* to complement the 2002 Commonwealth Acts. The NSW amendments allowed for a new form of corporate entity, the Incorporated Limited Partnership, for use as a structure for the new types of limited partnership (VCLPs, AFOFs, and VCMPs) to be reflected in the NSW partnership legislation.

In 2007, the Commonwealth further amended its laws to provide for another type of 'limited partnership' for venture capital purposes, the Early Stage Venture Capital Limited Partnership (ESVCLP). To complement those amendments, NSW enacted the *Partnership Amendment (Venture Capital) Act 2007* which amended the NSW *Partnership Act 1892*, to provide for persons or partnerships that are or intended to be an ESVCLP, under the Commonwealth legislation, to apply for registration under the NSW Act, as an Incorporated Limited Partnership.

## Registration forms and fees

To assist people wishing to register an ILP, Fair Trading has prepared an *Application for registration of an Incorporated Limited Partnership* form which provides for the registration of the following venture capital limited partnerships as ILPs under the NSW partnership legislation:

- Venture Capital Limited Partnership (VCLP)
- Early Stage Venture Capital Limited Partnership (ESVCLP)
- Australian Venture Capital Fund of Funds (AFOF)
- Venture Capital Management Partnership (VCMP).

View or download the *Application for registration of an Incorporated Limited Partnership* form from the NSW Fair Trading website.

For the latest list of fees, go to the Partnership Fees section on the NSW Fair Trading website.

From 1 July each year the fees for Incorporated Limited Partnerships are changed to reflect the rise in the Consumer Price Index (CPI). These adjustments are in line with the system of annual CPI based adjustments to Fair Trading's fees and charges introduced in 2000.

The annual review system for fees enables businesses and consumers to plan for smaller price increases, rather than be faced with more irregular 'jumps' in costs. The fees charged by NSW Fair Trading assist us in delivering a high standard of services to our customers.

## Enquiries and further information

People enquiring about registering an ILP may contact Registry Services on (02) 6333 1400 or freecall 1800 502 042.

Investors, interested persons and professional advisors should make their own inquiries about whether registering an ILP is applicable to their circumstances.

In that regard the following websites may be useful sources of information.

- [www.avcal.com.au](http://www.avcal.com.au)  
Website of the Australian Private Equity & Venture Capital Association Limited (AVCAL), which, according to its website, was established as a forum for industry participants to meet, pursue topics of common interest, promote the local industry and encourage investment in growing business enterprises.
- [www.ausindustry.gov.au](http://www.ausindustry.gov.au)  
Website of the Australian Government's agency, AusIndustry, for delivering products, services and information that support industry, research and innovation. The website includes entries for ESVCLPs and other venture capital limited partnerships.
- [www.ato.gov.au](http://www.ato.gov.au)  
Website of the Australian Taxation Office for information concerning venture capital tax concessions.

For more information contact:

Registry Services  
Ph: (02) 6333 1400  
FreeCall: 1800 502 042