

Proposed Changes to UK Limited Partnership Law Applicable to Private Funds

On 23 July 2015 HM Treasury issued a consultation on proposed changes to the Limited Partnerships Act 1907 (which governs both English and Scottish limited partnerships).

The proposed amendments would be made by way of a legislative reform order ("**LRO**") and are designed to simplify the existing regime for registration, administration and operation of UK limited partnerships structured as private funds, remove some of the uncertainties that exist and "ensure that the UK limited partnership remains the market standard structure for European private equity and venture capital funds as well as many other types of private fund".

Over recent years, a number of industry participants have been involved in extensive discussions with the Government regarding reforming UK limited partnership law for the purposes of the private funds industry, and the proposed legislative changes are the result of those discussions.

Application

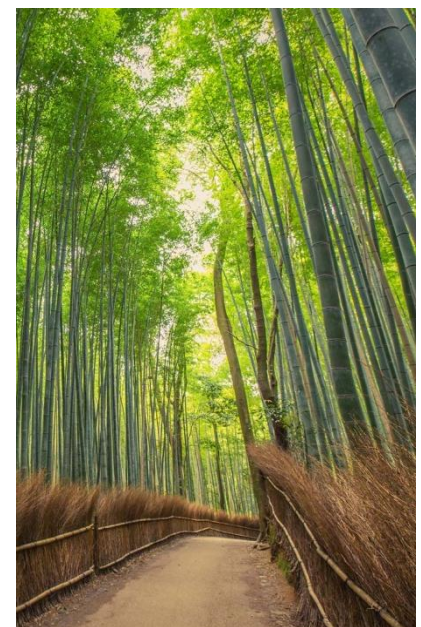
The changes would apply to a private fund limited partnership ("PFLP"). The proposed legislation defines a PFLP as a limited partnership that satisfies the following "private fund conditions":

- the partnership is constituted by an agreement in writing; and
- the partnership is a "collective investment scheme" as defined in the Financial Services and Markets Act 2000 (or would be but for the fact that each of the

limited partners is a body corporate in the same group as the general partner).

In order to be designated as a PFLP, new limited partnership registration applications will need to be accompanied by a specific request to be designated as a PFLP and a certificate signed by a solicitor to the effect that the limited partnership meets the private fund conditions.

For a period of 12 months following the coming into force of the LRO, existing limited partnerships will be



able to apply to be re-designated as PFLPs.

Main Proposed Changes:

- **Capital Contributions:** a limited partner in a PFLP will not be required to make a capital contribution to the PFLP and the statutory restriction on withdrawal of capital from a limited partnership will not apply to PFLPs.
- **Permitted LP Activities:** at present, limited partners have limited liability as long as they do not participate in the management of the partnership's business. The Limited Partnerships Act 1907 does not define what activities are considered involvement in the management of the partnership's business and this has always been open to interpretation (though there is common practice in the private funds industry). The draft legislation contains a proposed list of activities that limited partners in a PFLP will be able to carry out without being considered to be involved in the management of the PFLP's business and as such, can carry out without losing their limited liability status. The list is extensive and includes, amongst other things:
 - participating in certain investment decisions and decisions related to partnership borrowings;
 - participating in a decision about a change in the nature of the partnership's business,
 - disposal of the business or dissolution;
 - deciding whether or not a person should become, or cease to be, a partner;
 - approving partnership accounts and valuations of underlying partnership assets;
 - acting as a director/member, officer, employee of the general partner or manager;
 - taking part in a decision that involves an actual or potential conflict of interest relating to the partnership or its business;
 - discussing the prospects of the partnership business;
 - consulting/advising the general partner or the manager about the affairs of the partnership; and
 - appointing/nominating a representative to a LP committee.
- **Winding-Up:** at present, if limited partners wish to dissolve a partnership following removal of the general partner, they are required to obtain a court order to do so. It is proposed that this requirement be removed so that following a GP removal, limited partners can agree to wind up a PFLP without first obtaining a court order.
- **Removal from the Register/Striking-Off:** it is not currently possible to remove a limited partnership from the register once it has come to the end of its term/is inactive. The LRO will provide (a) the ability to apply to remove a PFLP from the register; and (b) the ability for the Registrar to remove a PFLP from the register if it has been inactive for a certain period of time (after giving notice to the PFLP concerned).
- **Registration Particulars:** it is proposed that the information required to be provided when registering a PFLP be simplified, so that there will be no requirement to register details of limited partner capital contributions, partnership term or the general nature of the PFLP's business with Companies House.
- **Gazette Notices:** the proposed LRO removes the requirement to advertise in the Gazette if a general partner becomes a limited partner in a PFLP or a limited partner assigns its partnership interest.

English limited partnerships do not have separate legal personality (Scottish limited partnerships do). The current proposals do not include the possibility of PFLPs electing to have separate legal personality (which is possible in some jurisdictions). The Government have confirmed that they are committed to exploring this, but such a change would be beyond the scope of a LRO, which is designed to remove or reduce legislative/regulatory burdens only.

Consultation responses are to be submitted by 5 October 2015.

The consultation paper and a draft of the Legislative Reform (Limited Partnerships) Order 2015 are available here:

<https://www.gov.uk/government/consultations/consultation-proposal-to-use-a-legislative-reform-order-to-change-partnership-legislation-on-collective-investment-schemes>

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