

MODERNISING THE ENGLISH LIMITED PARTNERSHIPS - THE LONG AWAITED GOVERNMENT CONSULTATION ON LP REFORM IS HERE

The limited partnerships law in the United Kingdom (UK) which governs private investment funds has been in place for over a century. The industry has long lobbied for amendments to the law in order to ensure that UK limited partnerships remain competitive in light of new products offered by other major fund jurisdictions. A modest number of amendments were implemented in 2009 following the consultation conducted by the DBERR (now known as the Department for Business, Innovation & Skills) in 2008, but there was no significant reform.

In 2013 the industry was pleased to find the Government's commitment to consult on technical changes to the limited partnerships law in its 2013 Budget. Finally, on 23 July, HM Treasury published a consultation paper seeking views on a number of proposed amendments to the Limited Partnerships Act 1907, the principal legislation governing UK limited partnerships. These amendments are set out in a draft legislative reform order published with the [consultation paper](#). The consultation period will end on 5 October 2015.

Set out below is a summary of these proposed amendments which are intended to provide a framework that will better accommodate the use of UK limited partnerships in private fund investments, whilst maintaining and enhancing the UK's competitiveness as a fund domicile.

APPLICATION

It is intended that the amended legislative framework will apply only to "private fund limited partnerships". Under the draft order, a private fund limited partnership is a limited partnership that is a collective investment scheme (as defined by the FSMA legislation) which is not authorised by the FCA and is constituted by a written agreement (the "private fund conditions").

The draft order sets out a process for both new and existing limited partnerships which qualify as private fund limited partnerships to be designated as such on the register of limited partnerships. An existing limited partnership may apply to the registrar to be designated as a private fund limited partnership within 12 months of the draft legislative reform order coming into force. The application must be made in such manner and accompanied by such information as the registrar may direct, and must include a solicitor's certificate to the effect that the partnership meets the private fund conditions and is not an authorised contractual scheme (as defined in FSMA).

PROPOSED AMENDMENTS

The proposed amendments cover three broad areas:

- ♦ registration and on-going filing and notification requirements;
- ♦ the role, function and rights of limited partners; and
- ♦ limited partners' obligations in respect of capital.

Summary of proposed amendments

Registration and on-going filing and notification requirements

- ♦ The registration process for a new limited partnership will be simplified by reducing the amount of information required to be submitted in the application for registration. Similarly, there will be fewer instances in which changes to a partnership's particulars will be required to be notified to Companies House.
- ♦ There will no longer be a requirement to advertise in the London or Edinburgh Gazette if a general partner becomes a limited partner, or upon the transfer of a limited partnership interest.
- ♦ The Registrar of Companies will have the power to remove partnerships from the register where they have been dissolved or where they are no longer carrying on a business, either on application by the partnership or where the registrar has reason to believe that the partnership is no longer carrying on a business. Currently there is no procedure for removing a limited partnership from the register, even where that partnership has been dissolved.

Role, function and rights of limited partners

- ♦ Under the current legislative framework, if a limited partner takes part in the management of the partnership business, it may lose its limited liability and become liable for all the partnership's debts and obligations that are incurred while it takes part in the management of the business. This basic position will not change, but the legislation will now include a non-exhaustive white list of activities that a limited partner may undertake without being treated as taking part in the management of the business. These permitted activities include the following:

- taking part in a decision about whether to allow a type or a particular investment by the partnership, or the incurrance, extension or discharge of debt by the partnership;
 - taking part in a decision about whether a person should become or cease to be a partner;
 - approving the accounts of the partnership and/or the valuation of partnership's assets;
 - taking part in a decision which involves actual or potential conflict of interest that affects or relates to the partnership, its business, a partner etc.;
 - appointing or nominating a person to represent the limited partner on a committee; and
 - acting as a director, member, employee, officer, shareholder (etc.) in a general partner or another person appointed to manage or advise the partnership.
- ◆ Partners will be allowed to agree amongst themselves who should wind up the limited partnership on its dissolution. This removes the current requirement for the general partner to wind up the partnership unless a court orders otherwise, which requires the limited partners to obtain a court order for the dissolution of the partnership in circumstances where there is no general partner (for example following its removal).
 - ◆ Limited partners will no longer be subject to statutory duties to render accounts and information to other partners and to account for profits made in a competing business.

Limited partners' obligations in respect of capital

- ◆ A limited partner will no longer be required to make a capital contribution to the partnership – its entire commitment will be able to be advanced as a loan.
- ◆ Where a limited partner does contribute capital and subsequently withdraws it, it will no longer be liable for the debts and obligations of the partnership up to the amount of any capital which it has withdrawn.

The government has confirmed that it remains committed to exploring whether English limited partnerships can have separate legal personality, but that this potential change requires further examination and will not come within the scope of the draft order at this time.

NEXT STEPS

Macfarlanes will be providing a response to the specific questions raised in the consultation paper prior to the deadline of 5 October 2015. Please let us know if you have any comments on the amendments outlined above, or if you would like any further information.

CONTACT DETAILS

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