

INVESTMENT FUNDS UPDATE



In the wake of the Brexit referendum, Theresa May and others in the UK business community adopted the slogan “open for business”. Proposed changes to UK partnership law, amongst other initiatives, suggest that the UK government is putting its money where its mouth is.

The UK government is proposing to introduce a new type of limited partnership which aims to be a more attractive investment option for private investment funds by reducing the administrative and financial burdens that impact these funds under the current limited partnership structure¹. These changes were discussed before the referendum in June of last year, but on all counts, they seem to have come at an opportune time - when the UK should be proactive in keeping and attracting business in the square mile.

HM Treasury has published a draft Legislative Reform (Private Fund Limited Partnerships) Order 2016 amending the Limited Partnerships Act 1907 (the LP Act) and introducing a new type of limited partnership, a “private fund limited

partnership” (PFLP), which would provide an alternative vehicle for funds in the UK, such as private equity and venture capital funds, through which to invest. If approved by parliament, the reforms are expected to come into force on 6 April 2017.

For an investment fund to qualify as a PFLP it must be constituted by an agreement in writing and be a collective investment scheme. The Financial Services and Markets Act 2000 defines a collective investment scheme as “*any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income*”.

As with general partnerships, PFLPs will be governed by the LP Act, the Partnership Act 1890 and the rules of equity and common law.

¹ Legislative Reform Order on the Limited Partnership Act: explanatory document, January 2017



There are a number of differences between PFLPs and traditional limited partnerships however the key differences, which we expand on below, are:

- The introduction of a white list of permitted actions that a limited partner may take which would not be considered as taking part in management.
- No capital contribution requirement.
- Limited partners may appoint a third party to wind-up the PFLP.

The White List

As the law currently stands, a limited partner may not take part in the management of a limited partnership. The amendments to the LP Act introduce a “white list” of activities which a limited partner of a PFLP may undertake without being regarded as taking part in management of the partnership and in doing so, provide some welcome clarity around what activities a limited partner can carry out without risk to their limited liability status. This is likely to be a welcome change given that investors are required to agonise over what would and would not constitute “taking part in the management” and having more clarity will no doubt provide certainty to those who are limited partners. Equivalent structures in other jurisdictions have already introduced a similar concept to allow limited partners to advise and supervise the general partner without opening themselves up to additional liability. The full white list can be found at the end of this briefing.

Capital Contributions

The LP Act currently requires limited partners to make a capital contribution to the partnership and each limited partner is liable for its capital contributions during the life



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ALEX KYRIAKOULIS, PARTNER

of the partnership. To get round this requirement given there is no minimum capital injection requirement, limited partners usually contribute a nominal sum (for example £1) and contribute the majority of the funds as a loan.

Under the proposed amendments to the LP Act, a limited partner of a PFLP will not be required to contribute any capital or property to the PFLP unless otherwise agreed between the partners. In a PFLP registered on or after 6 April 2017, a limited partner may withdraw any part of its capital contribution without being liable for debts or obligations. Where a limited partnership that existed before 6 April 2017 has subsequently been designated as a PFLP, a limited partner may not withdraw any contributions made before the designation and if withdrawn, the limited partner could be liable up to the amount withdrawn. Any capital contributed after the designation will be withdrawn without liability.

Winding-up

The LP Act currently requires a general partner to wind up a limited partnership unless a court order is obtained. Under the proposed amendments, if the PFLP has a general partner at the time of winding-up, the PFLP’s affairs must be wound up by the general partner, subject to any express or implied agreement between the partners. If the PFLP does not have a general partner, the PFLP’s affairs must be wound up by a party who is not a limited partner, appointed by those who are limited partners at that time, subject to any express or implied agreement between the partners. This allows the limited partners to authorise a third party to wind up the PFLP on their behalf without having to seek a court order. Importantly as well, any limited partner involved in selecting a third party to carry out the winding up can be certain that this will not affect their liability status as this has been included as a permitted activity under the white list.



WHITE LIST PERMITTED ACTIVITIES

- Taking part in a decision about:
 - the variation of, waiver of a term of, the partnership agreement or associated documents;
 - whether the general nature of the partnership business should change;
 - whether a person should become or cease to be a partner; or
 - whether the partnership should end or the term of the partnership should be extended.
 - Appointing a person to wind up the partnership.
 - Enforcing an entitlement under the partnership agreement, provided that the entitlement does not involve a limited partner taking part in the management of the partnership business.
 - Entering into, or acting under, a contract with the other partners in the partnership, provided that the contract does not require, or the action under the contract does not involve, a limited partner taking part in the management of the partnership business.
 - Providing surety or acting as guarantor for the partnership.
 - Approving the accounts of the partnership.
 - Reviewing or approving a valuation of the partnership's assets.
 - Discussing the prospects of the partnership business.
 - Consulting or advising with a general partner or any person appointed to manage or advise the partnership about the affairs of the partnership or about its accounts.
 - Taking part in a decision regarding changes in the persons responsible for the day-to-day management of the partnership.
 - Acting, or authorising a representative to act, as a director, member, employee, officer or agent of, or a shareholder or partner in:
 - a general partner in the partnership; or
 - another person appointed to manage or advise the partnership in relation to the affairs of the partnership
- provided that this does not involve a limited partner taking part in the management of the partnership business or authorising a representative to take any action that would involve taking part in the management of the partnership business if taken by a limited partner.
- Appointing or nominating a person to represent the limited partner on a committee, authorising such a person to take any action in that capacity that would not involve taking part in the management of the partnership business if taken by the limited partner, or revoking such an appointment or nomination.
 - Taking part in a decision about how the partnership should exercise any right as an investor in another collective investment scheme as defined in section 8D(4) (master fund), provided that the partnership's exercise of the right would not cause the partnership to be liable for the debts or obligations of the master fund beyond the amount contributed, or agreed to be contributed, by the partnership to the master fund.
 - Taking part in a decision approving or authorising an action proposed to be taken by a general partner or another person appointed to manage the partnership, including in particular a proposal in relation to:
 - the disposal of all or part of the partnership business or the acquisition of another business by the partnership;
 - the acquisition or disposal of a type of investment or a particular investment by the partnership;
 - the exercise of the partnership's rights in respect of an investment;
 - the participation by a limited partner in a particular investment by the partnership;
 - the incurring, extension, variation or discharge of debt by the partnership;
 - the creation, extension, variation or discharge of any other obligation owed by the partnership.



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