



4 May 2018

Government publishes reform proposals for UK Limited Partnerships

On 30 April, the UK Government's Department for Business, Energy and Industrial Strategy ("**BEIS**") published a [consultation](#) on proposed reforms to UK limited partnership law. The reforms seek to address concerns that Scottish limited partnerships ("**SLPs**") have been used for improper purposes and the Consultation seeks views on the proposed reforms by 23 July, 2018. The proposals affect all UK limited partnerships (as detailed below).

INTRODUCTION

Background to the Proposals

The publication of the Consultation follows BEIS's Call for Evidence published in January 2017. The responses to that Call for Evidence demonstrated that UK limited partnerships offer businesses a flexible business structure and perform an important role in the UK economy, including in the private investment fund sector. However, BEIS considered there was evidence that, in some contexts, SLPs were being used for improper purposes, which the reforms proposed in the Consultation seek to counter.

Which limited partnerships will be affected?

Whilst BEIS considers that the issues it identified involved the misuse of SLPs, it is proposing that the reforms affect all limited partnerships registered under the Limited Partnerships Act 1907 (the "**LP Act**"), not just SLPs. BEIS referred to this in its Call for Evidence where it referred to earlier consultations on reforming limited partnership law and stated that "*now may be the time to look again to see whether Limited Partnerships need reform*".

The proposals have implications for private funds structured as limited partnerships, both in terms of the fund vehicle itself and any carry or feeder partnerships in the fund structure, and also for other vehicles used in connection with private equity funds, such as co-investment vehicles. Accordingly, the investment funds

industry should examine these proposed reforms and comment on them where necessary or desirable to avoid any detrimental impact on the sector or on the use of the UK limited partnership in fund structures.

WHAT CHANGES HAVE BEEN PROPOSED?

The proposals cover the lifecycle of a limited partnership – from initial registration through to "striking off" a limited partnership.

Registration

Currently, formation agents are required under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "**AML Regulations**") to be supervised by an appropriate anti-money laundering ("**AML**") body. However, there are currently no checks in place to ensure that formation agents registering limited partnerships under the LP Act are appropriately supervised pursuant to the AML Regulations.

The Consultation proposes that any person presenting an application to register a limited partnership under the LP Act must provide evidence that it is being supervised by an appropriate AML body. This would have the effect that applications could not be made by individuals (although this is apparently seldom the case).

The Consultation states that the proposal aims to ensure that presenters operating lawfully will be able to continue to do so with minimum additional burden. This is very important because the implementation of this proposal should not diminish the attractions of UK limited partnerships by reducing the speed, or increasing the costs, of registering them. BEIS has not stated what evidence would be required and it is considering what information would be required/accepted from presenters from other jurisdictions having similar AML requirements to the UK.

Principal place of business

Currently, the LP Act requires each limited partnership to have a 'principal place of business' ("**PPOB**") located within the UK in the same jurisdiction in which it is being registered. There is no prohibition, however, on moving the PPOB within the UK, or even outside the UK.

The proposal contemplates that a limited partnership should have a 'meaningful connection' with the UK in the sense of having an address in the UK at which any competent authority can contact the limited partnership. To that end, BEIS has put forward two options: (i) that the PPOB must remain in the jurisdiction in the UK in which the limited partnership was initially registered, and the limited partnership must return an annual confirmation statement confirming (or updating) that PPOB and providing evidence of real commercial activity at that address (to show that it is genuinely the PPOB rather than merely a service address); or (ii) that the existing PPOB concept be left unaltered but a new requirement be introduced that the limited partnership have a service address which would have to remain in the jurisdiction of initial registration. Competent authorities would communicate with the limited partnership, and serve documents on it, at that address, and the limited partnership would have to confirm/update that address and also confirm its PPOB address (presumably at regular intervals).

A requirement to maintain a PPOB in the UK may have significant implications that might adversely affect the attractiveness of limited partnerships in certain contexts. In particular, it could make it difficult for a UK limited partnership to carry out significant activities outside the UK while maintaining its PPOB in the UK. For example, currently, many UK limited partnership investment funds are managed by general partners/managers based outside the UK. Additionally, the requirement to have a UK PPOB might have the effect of creating or increasing a liability to UK tax. If private equity funds are based outside the EEA they may fall outside the scope of the Alternative Investment Fund Managers Directive (the "**AIFM Directive**") (perhaps due to having a manager outside the EEA and no marketing activities in the EEA), but the requirement to have a UK PPOB would bring the manager of that fund within the scope of the AIFMD. BEIS acknowledges this AIFM Directive concern in the Consultation but the investment fund industry will need to respond and engage with BEIS to avoid this outcome.

Reporting

In the Consultation, BEIS considers that the reporting requirements for most limited partnerships are less onerous than those for UK limited companies, possibly creating a "weak point in the broader framework". The proposal in the Consultation is that an annual confirmation statement should be required to be made by all UK limited partnerships confirming that the information concerning them on the Register of Limited Partnerships is correct. The Consultation lists these details as the PPOB, the general and limited partners, the service address (if that proposal is implemented (see above)), and the sum contributed by each limited partner and whether it is contributed in cash or in kind. However, a limited partnership designated as a "private fund limited partnership" ("**PFLP**") is not required to register details of the sums contributed by limited partners which presumably should be reflected in the proposals.

The Consultation also seeks views on whether there is a case for limited partnerships to have to prepare reports and accounts in line with the requirements for private companies, as is already the case for "qualifying partnerships".

A requirement for a limited partnership to confirm each year the accuracy of the information on the Register is probably not, in itself, particularly controversial although limited partnerships are already obliged to notify the Registrar of Limited Partnerships (the "**Registrar**") of changes to the name of the partnership, its PPOB, any of its partners and to the liability of a partner by reason of it becoming a limited rather than a general partner or vice versa (and in the case of a limited partnership that is not a PFLP, a change in the sum contributed by a limited partner). If that existing requirement was enforced, a new requirement for an annual confirmation of these details would seem unnecessary.

The proposal that all limited partnerships be required to file annual reports and accounts raises more significant concerns because of the increased costs this might involve and, in the case of certain limited partnerships such as those in the private fund sector or where the limited partnership is used as the vehicle for a joint venture, the commercial sensitivity of the information that would be made publicly available. Again, this is a proposal on which the investment fund industry will need to respond and engage with BEIS.

Striking Off a Limited Partnership

At present, the Registrar has no power to strike off a limited partnership from the Register. This means that there are many limited partnerships listed on the Register that are no longer active and/or have been dissolved. The Consultation contrasts this with the position in the case of companies where the Registrar of Companies has power to strike a company's name from the Register of Companies when it has been dissolved or when the Registrar of Companies has reason to believe that the company is no longer carrying on a business or operating.

The Consultation proposes that the Registrar be given power to strike off limited partnerships in circumstances that mirror those in relation to companies. This would be in cases where the Registrar received information that the limited partnership had been dissolved (for example, from a general partner), and in cases where a limited partnership failed to file a confirmation statement (see above) in which case that failure might form the basis for a belief by the Registrar that the limited partnership was no longer in existence or carrying on a business or "in operation" (although the definition of "partnership" requires the partners to be carrying on business in common, so a partnership will generally cease to be a partnership if it ceases to carry on any business).

The effect of a "strike off" would again mirror the position in relation to companies. The historical record of the limited partnership would remain on the Register but its entry in the Register would be marked "Dissolved".

The ability to make an entry in the Register to reflect that a limited partnership no longer existed is welcome. However, equating this with the position in relation to companies may cause concerns. In particular, a company owes its existence to statute and so it can be dissolved by a power given by statute to the Registrar of Companies. However, a limited partnership is created by agreement between the partners and is not created or dissolved by an entry in the Register (unless that power is given to the Registrar by statute which seems to go beyond what the Consultation is suggesting).

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If the effect of a "strike off" is that the limited partnership ceases to be registered under the LP Act, one consequence of this will be that the limited partnership (if it continues to exist) will become a general partnership and so limited partners will lose their limited liability under the LP Act. This is a serious consequence for a limited partner particularly as limited partners do not take part in the management of the partnership business and it will normally be the general partner that is responsible for allowing a "strike off" (so limited partners may be wholly unaware of any potential strike off and of their loss of limited liability). This aspect of the Consultation may need further thought if it is not to risk prejudicing the attraction of UK limited partnerships, particularly in the context of investment funds established as limited partnerships where the limited liability of the investors is a paramount consideration.

The Consultation does recognise the potential for a strike off in error and proposes safeguards similar to those existing in relation to the strike off of companies to mitigate this risk (including the possibility of the Registrar reinstating the limited partnership).

WHAT HAS BEEN LEFT OUT

Legal personality

The Consultation is silent on the previously discussed option of allowing English limited partnerships to have separate legal personality. At the time of the consultations concerning the introduction of PFLPs, the possibility of enabling English limited partnerships to have separate legal identity was not pursued because this would require primary legislation. The Consultation states that primary legislation will be required to implement the reforms proposed and so BEIS could have also consulted on the possibility of allowing English limited partnerships the opportunity to have separate legal personality. The option for an English limited partnership to have separate legal personality is generally thought would enhance the attractions of using English limited partnerships in the investment fund sector so this seems to have been a real missed opportunity.

Call for Evidence

Some considerations contained in BEIS's Call for Evidence have not been included in the Consultation. These are:

- greater regulatory control of formation agents: this has not been included as the Government has recently taken steps to improve the supervision of formation agents;
- review of limited partnership registration fees: this has not been included as the Government considers that any revision to fees should be completed as a broader piece of work that reviewed the entire corporate regime; and
- online e-registration: this has not been included as the immediate focus is on companies (whose numbers far outweigh the number of limited partnerships).

NEXT STEPS

The proposed changes will require primary legislation, amending the relevant limited partnerships legislation for each of England & Wales, Scotland and Northern Ireland. No draft legislation is included in the Consultation and so, once published, the proposed amendments will need to be examined carefully so as to ensure that there are no unintended consequences for the investment funds' industry.

The consultation ends on 23 July 2018.

If you would like to discuss how these proposals may affect your business, please do get in touch with your usual Travers Smith contact.

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