



HM Treasury Responds to Proposed Changes to the Limited Partnerships Regime

On 24 March, HM Treasury published a [summary of consultation responses](#) (“Response”) to its proposed modernisations to partnership legislation for private equity investments. The Response, which details the government’s legislative intentions, suggests a number of significant amendments to the original proposals set out in HM Treasury’s [July 2015 consultation](#) (“Consultation”).

The proposed changes will introduce much-needed modernisations to the partnerships regime and ensure that the UK remains an attractive domicile for funds.

Executive Summary

The Response builds on the Consultation, which set out proposed changes to the Partnership Act 1890 and the Limited Partnerships Act 1907. Key changes include:

- Instituting a process for new and existing limited partnerships to be designated as private fund limited partnerships (“PFLPs”);
- Creating a “white list” of activities in which a limited partner of a PFLP may engage without losing its limited liability status;
- Removing the requirement for limited partners of a PFLP to contribute capital to the partnership; and

- Simplifying or removing filing and notification requirements for PFLPs.

The changes, which are to be implemented by way of a Legislative Reform Order (“Order”), are designed to ease the regulatory and administrative burden of the present regime.

Application and Registration

In order to register as a PFLP, a limited partnership must be:

- Constituted by an agreement in writing; and
- An unregulated collective investment scheme, or would be such a scheme but for one of the exceptions under section 235(5) of the Financial Services and Markets Act 2000.

While it was originally envisaged that new limited partnerships would need to request designation as a PFLP at the point of registration, the government conceded in the Response that many limited partnerships would not qualify as PFLPs from day one. It also acknowledged that the burden of obtaining a solicitor’s certificate to verify a PFLP’s status would be disproportionate to the benefit.

Therefore, it is now proposed that a limited partnership may apply to become a PFLP at any time in its life cycle. Responsibility will fall on the general partner to confirm that the partnership fulfils the requirements, and once a partnership has become a PFLP, it will not be able to revert back.

Existing limited partnerships which meet the criteria may apply to the Registrar of Companies for PFLP designation following the same process at any time.

Overview of Changes

White List

Under the current regime, a limited partner involved in the general management of the partnership may lose its limited liability status and be responsible for the debts and obligations incurred by the partnership while taking part in its management.

The draft Order sets out a white list of activities in which limited partners could engage without compromising their limited liability status. The list includes:

- Taking part in investment decisions of the partnership, including decisions related to partnership borrowings;
- Taking part in decisions about whether a person should become, or cease to be, a partner;
- Taking part in decisions about a change in the partnership business;
- Approving partnership accounts or valuations of partnership assets;
- Acting as a director, member, employee or officer of, or a shareholder or partner in, the general partner or the fund manager; and
- Consulting or advising the general partner(s) or fund manager about the affairs of the partnership.

While not exhaustive, the list offers welcome clarity for investors about their participation in core fund activities.

The government clarified in the Response that the creation of the white list does not mean that the activities on the list are permissible for limited partners by right and that the list does not create any adverse presumptions for limited partners in other partnerships.

Capital Contributions

The Limited Partnerships Act 1907 currently requires limited partners to make capital contributions to a partnership. More problematic, in a funds context, is the statutory restriction which prevents a limited partner from withdrawing its capital from the partnership.

In practice, private equity investors deal with this restriction by splitting their funding commitment between a nominal capital contribution and a loan to the partnership. This approach created a grey area insofar as it was unclear whether fractional capital contributions could be disregarded on *de minimis* grounds.

In recognition of the fact that these requirements have little practical value, the reforms will remove them entirely for new PFLPs: a limited partner may withdraw capital from the partnership, and indeed there will no longer be a requirement for limited partners in new PFLPs to make any capital contribution.

While the original proposals suggested that the same treatment would be applied to existing partnerships, the Response now makes it clear that, where a limited partnership was formed before the implementation of the Order, capital contributed before redesignation as a PFLP will be treated as under the former regime. Capital contributed after the limited partnership is redesignated will then be treated in accordance with the new regime.

Winding Up

Currently, limited partners who wish to wind up a partnership following the removal of the general partner(s) require a court order to do so.

On the basis that this requirement is burdensome and unnecessary, the Order will permit limited partners in PFLPs to appoint a third party to wind up the partnership on their behalf (but not do so on their own accounts). The Response clarified that the white list will specify that making such decisions will not amount to taking place in the management of the partnership.

Removal from Register

A lacuna in the current legislation means that the Registrar has no ability to remove a dissolved partnership from the register. Given that most private equity funds subsist for a fixed

term and are then wound down, this has resulted in an overcrowding of the register with dissolved limited partnerships.

While the draft Order envisaged the ability to strike PFLPs from the register on application by the partnership, the Response has now withdrawn this proposal. Many respondents were concerned that the measure could lead to limited partners unknowingly losing their limited liability status should an active PFLP be removed from the register. The government will consider further options for tidying up the register at a later stage.

Administrative Requirements

A further welcome change is a proposed reduction in the administrative burden on private equity funds.

Registration. HM Treasury indicated in its proposals that it sought to “protect investors’ privacy” and simplify the registration process by removing some of application requirements for a new PFLP.

Under the new regime, PFLPs will not need to declare the nature of the business of the partnership or detail the partnership’s term and character. Similarly, partnerships which convert to PFLPs will not need to notify the Registrar of changes to these particulars.

Gazette Notices. The draft Order pares back the circumstances in which changes to a limited partnership must be advertised in a Gazette. Under the new regime, PFLPs will not need to advertise the assignment of a partnership interest from one limited partner to another.

As this is a common occurrence in the life cycle of a fund, the change will reduce the compliance burden on general partners and fund managers.

Contrary to the original proposals, the Response makes clear that a PFLP will still need to advertise in the event of a general partner becoming a limited partner. This U-turn is a response to concerns that third parties would otherwise not know if they are dealing with a general partner who is liable for debts and obligations of the partnership. However, the provision will

be amended such that the Gazette advertisement no longer constitutes the date at which the change comes into effect.

Next Steps

In due course, HM Treasury will lay an amended draft Order before Parliament. On implementation, the changes will become operational within a year.

Managers should consider if any of their funds would be eligible for re-registration as PFLPs. Going forward, managers of new funds should consult with their legal advisors to ensure that limited partnerships are registrable as PFLPs where possible.

Lawyer Contacts

For further information, please contact your principal Firm representative or the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com/contactus/.

John C. Ahern
London
+44.20.7039.5176
jahern@jonesday.com

John MacGarty
London
+44.20.7039.5933
jmacgarty@jonesday.com

Robert C. Lee
Chicago
+1.312.269.4173
rclee@jonesday.com

Christopher Dearie
London
+44.20.7039.5920
cdearie@jonesday.com

Carolyn McNabb
Singapore
+65.6233.5983
cmcnabb@jonesday.com

Kristen DiLemmo
London
+44.20.7039.5725
kdilemmo@jonesday.com

Scott D. Peterman
Hong Kong
+852.3189.7318
speterman@jonesday.com

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our “Contact Us” form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.