Proskauer

Limited Partnership Reform – Streamlining the Existing UK Limited Partnership Regime for Private Funds

April 3, 2017

Executive Summary

On 6 April 2017, changes to the law governing UK limited partnerships will come into effect through the Legislative Reform (Private Fund Limited Partnerships) Order 2017 (the "LRO"). The changes introduce the new concept of a "private fund limited partnership" ("**PFLP**") into UK law. New and existing limited partnerships will be able to elect to be designated as PFLPs which will bring advantages compared to the existing limited partnership regime, including:

1. a 'white list' which sets out a non-exhaustive list of actions limited partners can carry out without risking their limited liability; and
2. limited partners will no longer have to advance capital to the partnership on admission in order to become a partner.

We would anticipate that a large majority of funds established on or after 6th April 2017 will elect to register as PFLPs; the decision of existing limited partnership funds to re-designate themselves as PFLPs will vary depending on their specific circumstances.

What is the LRO amending and why are the changes being made?

The LRO will amend the existing legislation and introduce a "private fund limited partnership" ("**PFLP**") concept. The principal aim of the LRO is to reduce the administrative burden and introduce operational flexibility thereby allowing the UK to continue to be an attractive domicile for funds compared to other jurisdictions.

When are these changes due to take effect?

The LRO will come into effect on 6th April 2017.

Can all UK limited partnerships apply to be designated as a PFLP?

The LRO enables a UK limited partnership to be designated as a PFLP if it fulfills the following conditions:

1. it is constituted by an agreement in writing; and
2. is a collective investment scheme (within the meaning of section 235, Financial Services and Market Act 2000 ("**FSMA**") (ignoring any exemptions under section 235(5), FSMA)). Most limited partnerships used for investment purposes, e.g. funds, co-investment vehicles, alternative investment vehicles and aggregator vehicles will meet this condition. It is possible that certain club deals and joint ventures may not qualify due to a significant level of involvement by the limited partners. This would need to be assessed on a case-by-case basis.

We would anticipate that the vast majority of limited partnership funds will be able to meet these two conditions.

New PFLPs can be so designated at the time of their initial registration; equally, existing UK limited partnerships may also re-designate themselves as a PFLP if they meet the conditions above and go through the re-designation process (as described in further detail below).

What are the key advantages of applying to become designated as a PFLP?

'White list' activities for limited partners

The LRO will introduce a non-exhaustive 'white list' of activities that limited partners are permitted to undertake without being regarded as taking part in the management of the partnership and exposing themselves to unlimited liability.

The 'white list' is not an exhaustive list, although the impact of other activities would need to be assessed in each case. The introduction of the 'white list' does not automatically permit limited partners to carry out all of these activities, rather this will depend on the terms agreed in the relevant partnership agreement.

A summary of some of the key 'white list' activities is set out at the end of this briefing note.

No requirement to make capital contributions

Limited partners will not be required to make capital contributions to PFLPs. Under the current legislation this is a requirement and can create timing issues at closing, as currently capital cannot be returned during a fund's life and requires the loan/capital split of an investor's commitment. The proposed change would simplify both the form of documentation and process.

For limited partnerships established before the LRO comes into effect which elect to become PFLPs, capital contributions which have been made will continue to be treated under the current regime and therefore must still be registered with Companies House which could create some confusion.

No requirement to file gazette notices

The LRO will remove the requirement to file a Gazette notice upon a transfer of interest by a limited partner to give the transfer legal effect. Further, the current law provides that until a person has notice of changes (i.e. through the Gazette notice) to the constitution of the partnership they are entitled to treat former partners, as continuing to be partners will be disapplied for PFLPs.

Winding-up process made simpler

The current legislation requires that a limited partnership must be wound-up by its general partner. Where the general partner has been removed, the remaining limited partners must apply for the partnership to be wound up under the supervision of the court. The LRO removes this requirement for PFLPs and grants the limited partners of a PFLP the power to authorise a third party to wind up the partnership on their behalf.

Removal of certain administrative burdens

The LRO removes the burden of filing certain information at Companies House. Specifically, PFLPs will not be required to file notices of the following at Companies House:

- changes which relate to the nature of the partnership's business
- changes to the term of the partnership; or
- details of capital contributed by any limited partner to the partnership.

However, certain safeguards on the accountability of limited partnerships will continue to remain for PFLPs, namely the names of the partners and the address of the principal place of business will still need to be filed at Companies House.

Are there any disadvantages to consider if applying to be designated as a PFLP when setting up a new fund?

Apart from private fund sponsors facing additional queries from prospective limited partners about the effects of a limited partnership being designated as a PFLP, we cannot see any significant disadvantages with private funds registering as PFLP and would therefore envisage that most new limited partnerships established will apply to be designated as a PFLP.

Are there any disadvantages to consider if applying to be designated as a PFLP as an existing fund?

Existing funds (as with new funds) will incur some administrative costs in re-designating a limited partnership as an PFLP (this process is described below). Apart from this, the disadvantages of a re-designation would be minimal.

Whether there would be a legal obligation to notify or seek the consent of limited partners before making a re-designation of a limited partnership will depend on the terms of the relevant partnership agreement and should be considered. In any case, it would be good practice to notify limited partners and this process would incur some administrative costs.

Ultimately, an assessment of the associated time and cost implications of a re-designation, compared with the advantages, should be undertaken prior to making the re-designation. The advantages of the 'white list' and the streamlined administrative processes that come with PFLP designation may lead funds to be re-designated even if capital already contributed will continue to be treated under the pre-LRO regime. The LRO does not have for a deadline by when existing limited partnerships must file for re-designation as PFLPs, and so fund sponsors can make the decision at a point in time of most convenience to them.

What practical steps are required in order to be designated as a PFLP?

In order for a limited partnership to be designated as a PFLP, the general partner may make an application either at the time of the initial registration of the partnership (using a new Form LP7) or at any time thereafter (using a new Form LP8). Both forms will require the general partner to confirm that the limited partnership fulfils the conditions to be a PFLP (which, as noted earlier, should not be an issue).

Upon acceptance of the designation as a PFLP, the registrar of companies will issue a certificate of designation as a PFLP for the limited partnership which will be conclusive evidence that the limited partnership was so designated. If the limited partnership is designated as a PFLP at the same time that it is registered, the registrar of companies may issue a combined registration as a limited partnership and designation as a PFLP.

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Summary of Key White List Activities

The 'white list' includes the following activities:

- Taking part in a decision about (a) the variation of, or waiver of a term of, the partnership agreement or associated documents; (b) whether the general nature of the partnership business should change; (c) whether a person should become or cease to be a partner; or (d) 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.
- Enforcing into, or acting under, a contract with the other partners in the partnership, provided that 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.
- Taking part in a decision regarding changes in the persons responsible for the day-to-day management of the partnership.

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