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UK Government Consults on Proposals To Reform Limited Partnerships

The UK government has recently launched a [consultation](#) on proposals to reform UK limited partnerships (LPs). LPs have long been considered to be an attractive investment vehicle due to the limited liability of limited partners for debts, and the ability for profits and losses to pass through the business to the partners. However, in light of the increasing pressure to improve corporate transparency and following initiatives in recent years, such as the introduction of the register of persons of significant control (PSC), the UK government has launched a public consultation regarding proposed reforms of the law regulating LPs.

Background

LPs regularly play a key role in business structures, including being frequently used in connection with joint ventures and some UK 'onshore' investment funds. The United Kingdom has recently sought to increase its attractiveness as a jurisdiction for funds by introducing a new subcategory of limited partnership known as the private fund limited partnership (PFLP).¹ However, the UK government has noted in the consultation that there is a concern that Scottish LPs have been used for illicit purposes. In contrast to English LPs, Scottish LPs have legal personality separate from their partners and, as such, are able to own assets and enter into contracts in their own right. An English LP does not have separate legal personality, and it is necessary for the general partner of an English LP to both enter into contracts and hold property on behalf of the LP. The UK government has determined that the difference in the operation of Scottish LPs in this regard has sometimes resulted in Scottish LPs being used as a means for money laundering the proceeds of crimes, although it has been noted that there has been a significant reduction in this activity following the introduction of the requirement to register PSCs at UK Companies House.

Reform Proposals

The consultation's key proposals, along with our comments, are set out below.

1. *Maintaining a UK principal place of business or service address*

It is a requirement for LPs to inform the Registrar of Companies if they move their principal place of business; however, some LPs may be moving their principal place of business without informing the Registrar of Companies—including to jurisdictions outside of the United Kingdom. The UK government is seeking views on two alternative options, which include:

- Requiring that an LP's principal place of business remains in the United Kingdom; or

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¹ For more information regarding PFLPs, please click [here](#).

- Allowing the principal place of business of an LP to be relocated outside the United Kingdom after its initial registration, provided that the LP maintains a UK address for service.

Either option would result in the UK authorities having a clear address for service, which would ultimately allow an LP to be struck-off the register for failure to comply with any enforcement notices that were served on it. However, option 2 (requiring that an LP maintain a UK service address) would be preferable from the point of investment funds, as this would allow funds geographic flexibility, including with respect to the determination of whether a fund is a European Economic Area (EEA) or a non-EEA Alternative Investment Fund for the purposes of the Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD).

2. LP registrations required to be submitted by person registered with AML supervisory body

The UK government is considering requiring all those seeking to register an LP to be registered with an anti-money laundering (AML) supervisory body, and to provide evidence that they are registered. The underlying concern here seems to be that some agents assisting with the formation of LPs are not adequately supervised from an anti-money laundering perspective. If adopted, this proposal could effectively eliminate the ability of individuals to submit applications for LPs.

As funds and other sophisticated investors who wish to structure their investments through LPs commonly use advisors or agents, this requirement may not have a significant impact on these sponsors provided that the required evidence of registration can be produced by advisors or agents on behalf of their clients.

3. Increased reporting requirements

LPs are not required to file accounts at UK Companies House in the same way that limited companies are, and while LPs are required to comply with registers of PSCs, the UK government is seeking views on whether a form of confirmation statement should also be required from all LPs, confirming that the information held about the LP by the Registrar of Companies is correct. This compliance requirement was extended to Scottish LPs in June 2017. The consultation also requests public comment in regards to whether LPs should be required to publish their accounts on a public register.

The proposal that English LPs provide a confirmation statement gives rise to many of the same considerations applicable with respect to PSC reporting requirements that now apply to UK limited companies and Scottish LPs. While the requirement that LPs file accounts would bring greater transparency to the operation of LPs, for any LPs which do not presently produce accounts, this requirement would likely result in additional costs.

This change may diminish the attractiveness of an LP as compared to a UK limited liability partnership, as LPs are not currently required to produce or prepare accounts, in contrast to UK LLPs which are required to do so.

4. Increased powers for Registrar of Companies to strike-off LPs from the companies register

The Registrar of Companies currently has no powers to remove or strike-off LPs from the register of companies; however, given the reliance on the LP structure by such a large number of companies that drive the UK economy, and the importance for the information held on those LPs to be as accurate as possible, the UK government is considering giving the Registrar of Companies such powers to do so. The circumstances allowing for strike-off would closely mirror those relating to the striking-off of limited companies.

The implementation of any striking-off procedure will need to be carefully considered. Although the UK government seems to be aware of the potential issues which could result from striking-off an LP from the register, complications could result if an LP were struck-off without adequate notice being given to the LP. Also, it would be important to avoid a situation which would result in an LP being struck-off and expose the limited partners to unlimited liability for the obligations of the LP.

Such proposals would likely need to be aligned to the proposals discussed above regarding the address for service, to ensure that adequate notice was given prior to any striking-off action being taken.

Future Developments

Following the close of the consultation on July 23, 2018, the UK government will consider the responses received and, following this, may publish a response before moving ahead with legislation. Participants in the investment management industry and other stakeholders would be well-advised to continue to monitor the developments in this area.

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