

UK Private Fund Limited Partnerships



A new form of limited partnership, a “private fund limited partnership” (“**PFLP**”), will shortly be available for private funds in the UK. [The Legislative Reform \(Private Fund Limited Partnerships\) Order 2017](#)¹ (the “**LRO**”) was laid before Parliament on 16 January 2017 and is expected to come into force on 6 April 2017. This follows a 2015 [consultation](#)² by HM Treasury on amendments to streamline the manner in which the Limited Partnerships Act 1907 (the “**1907 Act**”) applies to private funds, making the UK limited partnership structure a more attractive option for asset managers. The key changes to the 1907 Act for a PFLP are summarised in the box to the right.

Designation as a PFLP

There will be a new regime applicable to UK limited partnerships which qualify and elect to be treated as a PFLP. This will be possible where certain conditions (the “**private fund conditions**”) are satisfied, namely that the limited partnership:

- > is constituted by an agreement in writing
- > is a collective investment scheme (within the meaning of s235 Financial Services and Markets Act 2000 (“**FSMA**”), ignoring any order made under s235(5) FSMA – ie all of the exemptions)

The core elements deriving from s235 FSMA that will have to be satisfied are that the limited partnership:

- > is an arrangement with respect to property of any description (including money) the purpose or effect of which is to enable persons (ie more than one participant) taking part to participate in or receive profits or income from the property
- > participants do not collectively have day-to-day control of management, whether or not they have the right to be consulted or to give directions
- > contributions and profits/income are pooled and/or the property of the partnership is managed as a whole by the operator

Key Changes to 1907 Act for a PFLP

- > Must be a collective investment scheme (ignoring exemptions) to benefit from the regime
- > PFLP status possible to elect at any time, but this cannot be reversed
- > White list of permitted actions not considered to be “taking part in management”
- > Capital contributions:
 - > no need to make or register “capital” contributions
 - > any capital contributed may be withdrawn during the life of the PFLP
 - > subject to certain carve outs for existing partnerships becoming PFLPs
- > No requirement to register the general nature and term of the PFLP
- > Winding-up:
 - > no requirement for a court order to wind-up a PFLP
 - > limited partners can appoint a third party to wind-up a PFLP on their behalf (this is a white list action)
- > Certain statutory duties in the 1890 Act are disapplied
- > Gazette Notices:
 - > not required to be published on transfers of interests by limited partners
 - > required when general partner ceases to be a general partner, but this will not determine effective date of change
 - > Section 36(1) 1890 Act will be disapplied

¹ Published together with an [Explanatory Document](#) and an [Impact Assessment](#)

² See our previous [client alert](#) for more details on the consultation and outcome

Case law and general practice has developed to give further colour as to how each of the elements described above are to be interpreted. Importantly it will not be necessary to work through the numerous and complicated exemptions in various collective investment scheme exemptions orders, as these are disregarded.

In practice, the vast majority of limited partnerships which are funds, co-investment vehicles, AIVs and aggregator vehicles will likely be able to satisfy these conditions. Certain club deals and joint ventures, in particular some types of structures used for real estate investing, may not qualify due to the hands-on involvement of the parties. This will need to be assessed on a case-by-case basis.

An application for designation as a PFLP can be made by a general partner either at the time of initial registration of the partnership (on a new Form LP7), or at any time thereafter (on a new Form LP8), in each case once the private fund conditions are met. This will require the general partner to confirm in the application that the limited partnership fulfils the private fund conditions.

At that stage, the registrar must issue a certificate of designation as a PFLP for the limited partnership stating the date of designation, which shall be conclusive evidence that the limited partnership was so designated. If the limited partnership is designated as a PFLP at the same time as it is registered, the registrar may issue a combined certificate of both registration as a limited partnership and designation as a PFLP.

General partners of limited partnerships which are already in existence on the date on which the LRO comes into force will be eligible to make an application for designation as a PFLP if the limited partnership meets the private fund conditions, however any capital contributions made prior to the designation as a PFLP will be treated under the current requirements, as described below in "*Capital Contributions*".

Although applying for designation as a PFLP itself is unlikely to require investor consent, taking advantage of the new regime is likely to require amendments to partnership documents. What those are, and what investor consent requirements there are, will need to be looked at on a case-by-case basis.

A limited partnership which is designated as a PFLP will still be required to have a name ending with the words "limited partnership" or "LP", and will not be required to change this to "PFLP".

White list actions for limited partners

Currently, all limited partners who take part in the management of the business of a limited partnership are liable for all debts and obligations of the limited partnership incurred whilst taking part in the management, as if they were a general partner. The LRO includes a non-exhaustive list of actions that would not be considered taking part in management of a PFLP (a so-called "white list"), which will be of great interest to the funds industry, given the absence of safe harbours currently. See the box on the next page for the full white list. The government notes in the explanatory document to the LRO that the role of a limited partner is to advise and consent to actions taken by the general partner, and that therefore the intention of the white list is to provide limited partners with sufficient scope to monitor and assess the performance of investments and to approve actions of the general partner, but not to enable the limited partner to act on behalf of the partnership.

The white list is not intended to be a list of actions which will be electable by limited partners by right. Whether these actions are included in any given private fund limited partnership agreement will remain a matter of agreement between general partners and limited partners.

Importantly, the white list does not create any adverse presumptions for limited partners in other limited partnerships. Therefore the current approach as to what actions do and do not amount to "taking part in management" will continue for limited partnerships which are not PFLPs.

Capital contributions

The 1907 Act currently requires: (i) limited partners to make a capital contribution to the partnership, (ii) that such contributions be registered with Companies House, and (iii) that the relevant limited partner is liable for any of its capital contributions that are withdrawn during the life of the partnership. These requirements will all be removed for new PFLPs. Therefore the loan/capital split mechanism applied in fund limited partnership agreements will no longer be required, and as such all contributions will be "capital" in the broadest sense. It will also mean that investors will no longer have to contribute "capital" before they are able to be registered as a limited partner (provided the partnership has at that stage been designated as a PFLP). This has commonly been achieved by way of a loan from the general partner on closing (repayable on first drawdown), rather than having to make an immediate call for the nominal "capital" element of a limited partner's commitment to a fund. However it is an administrative burden which can now be avoided for PFLPs.

The LRO carves out a different treatment for existing partnerships which elect to become PFLPs:

> *for limited partnerships existing prior to the LRO coming into force*: Capital contributions made prior to the limited partnership transferring into the PFLP regime will be treated as under the former regime ie, will not be withdrawable, and if withdrawn the partner will remain liable. Such PFLPs will also need to notify the registrar of any withdrawal by a limited partner of capital contributions which result in the partner's contribution being less than it was on the date on which the partnership was designated as a PFLP

> *for limited partnerships which are registered after the LRO comes into force*: If the partnership transfers to PFLP status, the treatment of capital contributions will also transfer, such that all of the capital (whether contributed before or after designation as a PFLP) is withdrawable

Other registration requirements

When making an application to be a PFLP on registration of a partnership (using Form LP7), the following details are required to be registered: the partnership name, the name of each general partner and limited partner, and the address of the proposed principal place of business. The general partner will also be required to declare the partnership meets the private fund conditions as noted above in "*Designation as a PFLP*". Any subsequent changes to the details provided, as well as changes to the liability of any partner (if it becomes a limited partner rather than a general partner or vice versa) will need to be filed with the registrar on Form LP6, which is being amended by the LRO.

If the partnership does not satisfy the private fund conditions initially, it will need to use Form LP5 (which is also being amended by the LRO) for registration, providing all the details currently required ie those noted above plus the general nature and the term of the partnership, and the capital contributions of limited partners. Thereafter, it can file a Form LP8 for designation as a PFLP, following which only changes as noted in the paragraph above will need to be notified on a Form LP6.

Winding-up

The 1907 Act requires that a limited partnership must be wound-up by its general partner unless a court orders otherwise. This can be problematic where the general partner has been removed, as it requires a court order to be obtained and this can take time. Instead the LRO permits limited partners in a PFLP to appoint a person who is not a limited partner to carry out the wind-up where there is no general partner. Where there is still a general partner, the LRO also permits the partners generally to agree a person other than the general partner to carry out the wind-up. Crucially, limited partners' limited liability should not be jeopardised by appointing a person to wind-up the PFLP, and this action has been included in the white list to make that clear.

This development is important for a few reasons:

- > the general partner may be a “man of straw” without sufficient staff or regulatory permissions (if necessary) to carry out the wind-up, therefore a different entity in the general partner’s group (such as the investment manager) may be better equipped to do this
- > an authorised insolvency practitioner may be required
- > commercially in some circumstances (for example the partnership is being terminated “for cause”), investors may insist that it is not the general partner or a member of its group who carries out the wind-up

The requirement for a general partner or a court order has always been an obstacle that has had to be worked around in these cases, and therefore this change will be of great benefit.

Exemption from certain statutory duties

Certain duties applicable to partners under the Partnership Act 1890 (the “1890 Act”) have been disapplied for limited partners in a PFLP. These duties derive from section 28 1890 Act (duty of partners to render accounts and information of all things affecting the partnership to any partner) and section 30 1890 Act (duty of the partner not to compete with the partnership). It has always been possible to disapply these sections (in the limited partnership agreement, for example), and it is useful for this to be the case by default for a PFLP.

Gazette notices

PFLPs will not need to undertake the administratively burdensome process of publishing a Gazette notice on transfers of interests by a limited partner. The LRO also disapplies section 36(1) 1890 Act, which provides that until a person has notice of changes to the constitution of a partnership they are entitled to treat former partners as continuing to be partners if they so appear, and that a notice in the Gazette constitutes such notice. PFLPs will be required to publish a Gazette notice when a general partner ceases to be a general partner, although the date of the notice will not determine the effective date of the change. That being said, until any person dealing with the PFLP has notice of the change, they will be entitled to treat the retiring general partner as a current general partner. A Gazette notice will constitute notice for this purpose.

Next steps

The LRO has been laid before Parliament and the government has recommended that it be considered under what is known as the “affirmative resolution” procedure. This is a process for approval of certain statutory instruments (such as the LRO) by both Houses of Parliament, and requires a resolution of both Houses. Parliament can only approve or reject a statutory instrument, it cannot amend it. As part of this process, the LRO will now be considered by the Parliamentary Regulatory Reform Committee (responsible for scrutiny of legislative reform orders in the House of Commons) and the Delegated Powers and Regulatory Reform Committee (responsible for scrutiny of legislative reform orders in the House of Lords). The LRO itself contemplates coming into force on 6 April 2017, if approved by Parliament.

The White List actions are:

- > Taking part in a decision about:
 - > the variation of, or 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
 - > 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 (“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



Abu Dhabi | Amsterdam | Antwerp | Bangkok | Beijing | Berlin | Brisbane* | Brussels | Cape Town*** | Delhi^Δ | Dubai
Düsseldorf | Frankfurt | Hanoi* | Ho Chi Minh City* | Hong Kong | Jakarta** | Johannesburg*** | Lisbon | London
Luxembourg | Madrid | Melbourne* | Milan | Moscow | Mumbai^Δ | Munich | New York | Paris | Perth* | Port Moresby*
Rome | São Paulo | Seoul | Shanghai | Singapore | Stockholm | Sydney* | Tokyo | Warsaw | Washington, D.C.

* Office of integrated alliance partner Allens

** Office of formally associated firm Widyawan & Partners

*** Office of collaborative alliance partner Webber Wentzel

^Δ Office of best friend firm TT&A

Key contacts



Jonathan de Lance Holmes
Partner, Investment
Management Group, London
Tel: +44 20 7456 3126
jdellance@linklaters.com



Matthew Keogh
Partner, Investment
Management Group, London
Tel: +44 20 7456 3118
matthew.keogh@linklaters.com



Edward Smith
Partner, Investment
Management Group, London
Tel: +44 20 7456 3111
edward.smith@linklaters.com



Emily Harmsworth
Senior PSL, Investment
Management Group, London
Tel: +44 20 7456 5315
emily.harmsworth@linklaters.com

linklaters.com



Author: Emily Harmsworth

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the individuals listed above.

© Linklaters LLP. All Rights reserved 2017

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP together with a list of those non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

Please refer to www.linklaters.com/regulation for important information on our regulatory position.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications.

We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms.

If any of your details are incorrect or have recently changed, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at marketing.database@linklaters.com.