

Management Alert



New UK Limited Partnership for Private Funds

By Robert Hanley

On 6 April 2017, a new form of limited partnership came into existence with the introduction of a 'private fund limited partnership' (PFLP) under the *Legislative Reform (Private Fund Limited Partnership) Order 2017 (LRO)*. The PFLP is intended to make the limited partnership structure more attractive for asset managers and investors by reducing some of the administrative and financial burdens of the LP structure and by clarifying which activities a limited partner can undertake without losing or risking its limited liability. The Government hopes that the new PFLP structure will make the UK an attractive domicile for funds compared to other jurisdictions.

Designation as a PFLP

Existing and new UK limited partnerships may elect to be designated as a PFLP if two 'private fund conditions' are satisfied, namely:

- It is constituted by an agreement in writing; and
- It is a collective investment scheme (as defined in section 235 of the *Financial services and Markets Act 2000 (FSMA)*).

It is expected that most funds and co-investment and alternative investment vehicles will satisfy these conditions.

An existing LP may choose to apply for PFLP status if it fulfils the above conditions by application to Companies House in the UK. Similarly, a new LP may apply to Companies House for registration as a PFLP. Once registered and designated, the registrar will issue a certificate of registration and a certificate of designation as a PFLP or a combined certificate.

An LP that is designated as a PFLP will not be able to reverse the process and return to LP status.

Advantages of a PFLP

Non-exhaustive 'white list' of permitted activities - In a traditional LP a limited partner may not take part in the management of the LP's business without becoming liable for the LP's debts, and there has, until now, been uncertainty as to which activities would amount to 'taking part in the management' of the LP. For PFLPs section 6A of the LRO sets out a non-exhaustive 'white list' of activities a limited partner of a PFLP may carry on without being considered to take part in the management of the business and without losing its limited liability. The 'white list' of activities is particularly intended to cover institutional investors which have a strong interest in the relevant fund and have obligations to their own members or investors. The 'white list' includes:

- Taking part in a decision about the variation or waiver of a term of the partnership agreement or associated documents, changes to the general nature of the partnership business, an entity becoming or ceasing to be a partner and termination or extension of the term of the partnership;

- Appointing a person to wind up the partnership;
- Enforcing an entitlement under the partnership agreement;
- Entering into, or acting under, a contract with the other partners in the partnership;
- 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 persons responsible for the day-to-day management of the partnership;
- Appointing or nominating a person to represent the limited partner on a committee; and
- Taking part in a decision about how the partnership should exercise any right as an investor in another collective investment scheme.

No capital contributions - Unlike for traditional LPs, in a PFLP limited partners are not required to contribute any capital to the PFLP, and any capital contributed may be withdrawn during the life of the PFLP;

No need to file Gazette notices - The LRO has removed the obligation to file a Gazette notice on a transfer of an interest by a limited partner of a PFLP. However, the requirement to file remains where any person will cease to be a general partner in a PFLP.

Administrative burdens removed - Unlike LPs which are not PFLPs, a PFLP is not required to file notices at Companies House of changes to the partnership's business or term of the partnership or details of capital contributed by any limited partner.

Disadvantages of a PFLP?

Although there don't appear to be any disadvantages with funds registering to be designated as a PFLP, existing funds (as with new funds) will incur some administrative time and costs in re-designating an LP as a PFLP. It will depend on the terms of the relevant partnership agreement, but there may be a requirement to notify or obtain the consent of the limited partners before applying for a re-designation.

Winding-up a PFLP

The requirement for limited partners to obtain a court order to wind-up a limited partnership when there is no general partner does not apply to a PFLP. The LRO grants the limited partners of a PFLP the power to authorise a third party to wind-up the partnership on their behalf.

If you have any questions, please contact your Seyfarth attorney, [Robert Hanley](#) (London office) at ghanley@seyfarth.com, or any member our [International Corporate & Commercial Practice](#).

www.seyfarth.com

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Management Alert | April 11, 2017

©2017 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.