LEGAL BRIEFING

Introducing the new Scottish private fund limited partnership

UK partnership law has been relatively unchanged for over 100 years. So it was big news on 6 April 2017, when a new partnership vehicle was introduced in the UK. The *private fund limited partnership* ("PF LP") has been designed specifically for the private funds industry, and reduces administrative requirements while maintaining the UK's competitive position with other jurisdictions. A PF LP is a UK limited partnership, established under the UK Limited Partnerships Act 1907, which has been designated as a private fund limited partnership.

WHY USE A PF LP?

The PF LP is intended to be a more flexible and streamlined vehicle as compared to a UK limited partnership which has not been designated as a private fund limited partnership. The new PF LP regime applies equally in England and Scotland. Unlike English PF LPs, Scottish PF LPs have separate legal personality and this makes them suitable for use in layered partnership structures. There are particular advantages in using Scottish PF LPs as feeder vehicles.

A UK limited partnership which has been designated as a PF LP has several added features, such as:

1. a new flexibility around the capital structure;
2. more clarity on the actions limited partners can undertake without jeopardising their limited liability;
3. streamlined registration requirements;
4. a less burdensome process for the transfer of partnership interests; and
5. particular characteristics which will make Scottish PF LPs ideal feeder vehicles.

These features and others are described further below.

New flexibility around capital structure

In a conventional limited partnership, each limited partner must contribute capital to the partnership. The amount of that capital contribution is made public. That limited partner's liability is limited to the amount of capital so contributed. The limited partner cannot receive capital back during the lifetime of the partnership – if it does the amount it receives back is subject to clawback. It is this clawback which drives the conventional UK loan/capital split.

Limited partners in a PF LP need not contribute capital to the partnership. If a limited partner chooses to contribute capital, details of that limited partner's contributions are not made public. The prohibition on receiving capital back during the lifetime of the partnership does not apply to PF LPs. The limited liability of limited partners is not referable to the amount of capital they contribute – under the new regime, only partnership property is available to meet the partnership's liabilities.

These changes mean that the capital structure of a PF LP may be all capital, all loan or a mixture of both.

Safe harbours and limited liability

In a conventional limited partnership, limited partners cannot take part in the management of the business of the partnership. If they do, they lose their limited liability. There is no clarification in the statutory law on limited partnerships as to what constitutes taking part in the management of the business of the partnership.

In relation to PF LPs, the new law sets out specific actions limited partners can take without taking part in the management of the business by setting out a list of safe harbours. The new "white list" for PF LPs is therefore a significant benefit and provides a certainty that was previously lacking. The white list also brings the UK into line with several other jurisdictions which have maintained a similar list of safe harbours for some time.

An example from the white list is that limited partners may now take part in decisions approving or authorising a particular investment by the partnership or the exercise of the partnership's right in relation to an investment. While in most fund arrangements the manager may not wish the limited partners to take part in such decision-making, this ability may well be useful in relation to certain single investor mandate situations.

It is worth noting that the white list is non-exhaustive. Other activities may also fall within the category of not taking part in management, although there would not be the same level of certainty in relation to those activities.

Streamlined registration requirements

A number of details which require to be filed/made public in relation to conventional limited partnerships do not so require to be filed/made public in relation to PF LPs. They include:

a. a description of the partnership's business;
b. details of the term (length of existence) of the partnership; and
c. details of any contributions made by limited partners.

Less burdensome process for the transfer of partner interests

In relation to a conventional limited partnership, it is necessary to advertise the fact of any transfer of a limited partner interest in the Edinburgh Gazette (for a Scottish partnership) or the London Gazette (for an English partnership).

This requirement does not apply to PF LPs, and will make the transfer of interests in a PF LP considerably easier.

Ideal feeder vehicles

Because of their separate legal personality, Scottish limited partnerships are frequently used as feeder vehicles. In a conventional Scottish limited partnership it is unclear whether feeder voting leads to loss of a limited partner's limited liability.

The law in relation to PF LPs has been clarified, in part due to Burness Paull's contributions to the Government consultation process on partnership law reform. If a feeder vehicle is designated as a PF LP, the feeder investors can take part in decision making about how the feeder exercises its rights in the fund without losing their limited liability at feeder level.

We expect that clients structuring feeder vehicles will find Scottish PF LPs particularly useful and attractive.

Partners' duties

In relation to a conventional limited partnership, all partners are bound:

a. to disclose all matters affecting the partnership to all other partners of the partnership; and
b. not to compete with the business of the partnership without the consent of the other partners.

These duties are part of the overall duty of good faith which is said to be owed by partners in a partnership to each other.

These two duties do not apply to limited partners of a PF LP. This is helpful because these duties are not always appropriate for certain passive investors. Partnership agreements may disapply this provision however, and require limited partners of PF LPs to comply with these duties.

DIFFERENCES BETWEEN SCOTTISH LIMITED PARTNERSHIPS AND SCOTTISH PRIVATE FUND LIMITED PARTNERSHIPS

	Scottish limited partnership	Scottish private fund limited partnership
No requirement for limited partners to contribute capital to the partnership?	✗	✓
Withdrawal of capital contributed by limited partners during the life of the partnership allowed?	✗	✓
Any limited partner capital contributions to remain undisclosed?	✗	✓
Clarity on certain actions which do not constitute taking part in the management of the partnership business?	✗	✓
No requirement to advertise limited partner transfers?	✗	✓
Certainty that feeder voting does not constitute "taking part in management"?	✗	✓
Certain partner duties disapplied?	✗	✓
Separate legal personality?	✓	✓

WHO CAN BE A PF LP?

Any limited partnership which is:

1. constituted by a limited partnership agreement in writing; and
2. a fund vehicle defined with reference to the UK definition of "collective investment scheme" (ignoring any exemptions),

may be designated as a PF LP.

We expect that most limited partnerships used for investment purposes would meet these conditions.

Existing limited partnerships which meet these conditions may be re-designated as PF LPs.

RE-DESIGNATING EXISTING LIMITED PARTNERSHIPS AS PF LPS

Existing limited partnerships may change their status to become PF LPs at any time. Clients may wish to do so in order to take advantage of the PF LP benefits outlined above, eg. the certainty of the white list, the opportunity to re-evaluate the capital structure, the streamlined administrative process or the advantages for feeder vehicles.

In choosing to re-designate as a PF LP, note that:

1. capital contributed prior to becoming a PF LP would be treated under the regime applicable to conventional limited partnerships;
2. there may be some administrative costs involved in the re-designation process, eg. the amendment of the limited partnership agreement (if necessary), notification of limited partner investors and registration fees.

FINALLY…

The new PF LP vehicle exists because of lobbying by the UK funds industry. The result is a vehicle that is aimed at the needs of the private funds market. No one knows as yet how popular the new regime is going to be but we think that PF LPs are likely to be widely utilised because of the advantages they offer, in particular in relation to feeder structures.

Burness Paull

Contact Us

This briefing note is intended as general guidance on current issues in the law. It is not a substitute for advice and it may not be relied upon as such.

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