

CorporateLiveWire

INVESTMENT FUNDS 2017

EXPERT GUIDE

www.corporatelivewire.com



MinterEllison

TRAVERS SMITH

WOLF THEISS

DILLON EUSTACE



Sam Kay

sam.kay@traverssmith.com
+44 (0) 20 7295 3334
www.traverssmith.com



Anthony McWhirter

anthony.mcwhirter@traverssmith.com
+44 (0) 20 7295 3629
www.traverssmith.com

TRAVERS SMITH

Private investments funds: reforms to UK limited partnership law

By Sam Kay & Anthony McWhirter

UK limited partnerships are the most common structure for European private equity and venture capital funds and, in recognition of the importance of the private investment funds business to the UK finance sector, the Government has introduced important reforms to the UK limited partnership law applicable to private investment funds, taking effect on 6 April, 2017. These reforms are designed to simplify the pre-existing law, and reduce uncertainty and administrative costs and burdens, ensuring that the UK remains an attractive and competitive location for private investment funds in comparison to other jurisdictions.

The Private Fund Limited Partnership

The reforms introduce the concept of a “Private Fund Limited Partnership” (“PFLP”). A PFLP is a limited partnership that satisfies the following two conditions:

- (i) It is constituted by an agreement in writing; and
- (ii) It is a “collective investment scheme” within the meaning of section 235 of the UK Financial Services Markets Act 2000 (“FSMA”) but ignoring any exemptions pursuant to section 235 (5) of the FSMA.

Most private equity and venture capital funds (and related vehicles such co-investment vehicles, and feeder funds) will fulfil these conditions.

For the new rules to apply to a PFLP, it must be “designated” as a PFLP by the registrar of limited partnerships following an application by the general partner

who must confirm that the partnership qualifies as a PFLP (but a limited partnership that qualifies as a PFLP is not obliged to apply to be designated). This application can be made at the time of initial registration of the limited partnership or at any time thereafter. UK limited partnerships in existence prior to the introduction of the reforms may also apply to be designated as a PFLP. Once a certificate of designation as a PFLP has been issued, it cannot be revoked.

Advantages of being a PFLP

White List Activities

Under UK limited partnership law, a limited partner becomes fully liable for the debts and obligations of the limited partnership if it takes part in the management of the partnership business. There has always been some uncertainty as to what may amount to “taking part in the management of the business of the partnership”.

The reforms introduce a “white list” of activities that will not be regarded as taking part in the management of the partnership business and so can be undertaken by a limited partner without jeopardising its limited liability. The list is not exhaustive and the reforms do not give limited partners the right to undertake any of these activities, which remains a matter to be agreed in the limited partnership agreement.

The white list activities will provide comfort in a number of areas including the following:



- (i) appointing or nominating a person to represent a limited partner on a fund’s advisory committee;
- (ii) taking part in a decision authorising or approving the acquisition or disposal by the partnership of a particular investment or type of investment, or the incurring, extension, variation or discharge of debt or any other obligation by the partnership, or the exercise of the partnership’s rights in respect of an investment;
- (iii) taking part in a decision as to how the partnership exercises any right as an investor in another collective investment scheme (provided the partnership’s exercise of the right would not cause it to be liable for the liabilities of the investee scheme beyond the amount the partnership agreed to contribute to the investee scheme);
- (iv) taking part in a decision about the variation of, or waiver of, a term of the partnership agreement or associated documents, or whether the partnership should end or its term be extended, or whether a person should become or cease to be a partner; and
- (v) taking part in a decision regarding changes in the persons responsible for the day-to-day management of the partnership.

“
Assuming that HMRC applies the 2003 Memorandum of Understanding to PFLPs, we consider it is likely that new UK limited partnership funds will take advantage of the PFLP regime and existing funds will need to consider whether they should apply to be designated as PFLPs.
 ”

Partnership Capital

Limited partners were required to contribute capital to a UK limited partnership upon becoming a limited partner and, if they withdraw capital during the life of the partnership, they are liable for the liabilities of the partnership up to the amount of the capital withdrawn. These two rules have resulted in administrative complexity at the time a limited partner is admitted to the partnership, and to the split of funding provided by a limited partner between a small amount of capital and the balance as loans.

Both of these rules have been abolished so that the entire funding to be contributed by a limited partner to a PFLP can be in the form of capital (although, if desired, a PFLP can retain the loan/capital split).

Note that there is a difference between the treatment of capital in cases where an existing limited partnership becomes a PFLP. If the limited partnership was in existence when the reforms were introduced and elects to be a PFLP, capital contributions made prior to it being designated as a PFLP will be covered by the old regime. If the limited partnership was registered after 5 April 2017 and became a PFLP, all capital contributed will be covered by the new regime irrespective of when it was contributed.

Winding-up

Under the old regime, a limited partnership was required to be wound up by its general partner unless a Court ordered otherwise. This caused complexities where there was no general partner (for example, if the general partner had been removed). Under the new regime the limited partners in a PFLP may appoint a person that is not a limited partner to carry out the winding-up.

Filing/advertising requirements

There is no longer any obligation on registration of a limited partnership (which is a PFLP) to provide details of the general nature of the partnership business, the amount of capital contributed by each limited partner, or the term of the limited partnership. There is also no obligation to notify any changes to any of these details.

The obligation under UK limited partnership law to advertise in the London Gazette (or Edinburgh Gazette for Scottish limited partnerships) any transfer of a limited partner's interest in the partnership gave rise to a number of complications. But this obligation has now been removed in the case of PFLP. The requirement to advertise in the relevant Gazette if a general partner becomes a limited partner remains, but the time such

change takes effect is not affected by when the advertisement appears in the Gazette.

Miscellaneous changes

The statutory duty of partners to render accounts and information in relation to the partnership and not to compete with the partnership have been dis-applied in relation to a PFLP.

Conclusion

These reforms to UK limited partnership law are long overdue and are to be welcomed even though some other possible reforms have been shelved (such as whether an English limited partnership should have separate legal personality). Assuming that HMRC applies the 2003 Memorandum of Understanding to PFLPs, we consider it is likely that new UK limited partnership funds will take advantage of the PFLP regime and existing funds will need to consider whether they should apply to be designated as PFLPs.

Sam heads up the Investment Funds Group and specialises in fund formation work for a wide range of private funds. He has over 18 years' experience working on investment funds projects and he has been a partner at Travers Smith since 2008.

He also works on secondaries transactions, carried interest arrangements and co-investment schemes, advising institutional investors on their participation in funds and internal restructurings such as LLP conversions, succession planning and management spin-outs.

Sam is recognised for Investment Funds work by Chambers and Partners, IFLR1000 and Who's Who Legal for Private Funds. Sam was ranked in Super Lawyers 2015.

Anthony joined Travers Smith in September, 2016 as a consultant in the Investment Funds Group.

Anthony has a wealth of experience in the investment fund and investment management sectors including advising on the establishment, marketing and operation of investment funds using many different legal structures and pursuing a variety of investment strategies, including retail, listed, and private funds. He has also advised on the applicable tax and regulatory issues facing investment funds and investment managers, as well as on related matters such as secondaries, fund reviews for investors, fund restructurings, segregated accounts and LLP conversions.