



Paul McLaughlin, a Partner in Brodies' Funds Group, has developed a specialism in establishing and providing specialist advice on the many legitimate applications of general partnerships, LLPs and, particularly, Scottish limited partnerships ("SLPs") established under the Limited Partnerships Act 1907 (the "1907 Act"). He regularly deals with SLPs, for example, when they are used:

- in private equity or real estate main fund structuring;
- as carried interest vehicles (aimed at filtering a proportion of the profits earned by the main fund vehicle to the investment management team);
- as components in structures aimed at indirect investment in high value real estate assets; or
- as elements of pre and post-acquisition group structures of U.S listed companies (aimed at maximising the operational efficiency of the European strands of such groups).

Characteristics of SLPs

The above provides a flavour of the types of scenarios and structures in which the ever versatile SLP can be found.

The versatility and popularity of SLPs can be ascribed to its unique characteristics, namely:-

- It has two types of partner. The general partner is exclusively responsible for all management functions and has unlimited liability for all debts of the entity. Limited partners are passive from a management perspective and have limited liability to the extent of their capital contributions (which are often nominal sums, with the lion's share of investments being classified as loan advances).
- It is a UK tax transparent vehicle, with UK tax (potentially) being chargeable at the participant, but not the vehicle level.
- It is not a body corporate.
- It has separate legal personality (which is not enjoyed by English limited partnerships ("ELPs")).

Private Fund Limited Partnerships ("PFLPs")

In July 2015, the Government consulted on possible changes to the 1907 Act regime for ELPs and SLPs. The proposed reforms have now been implemented, with effect from April 2017. These reforms (summarised below) bring the regime for UK limited partnerships much more into line with those of other legal centres such as Delaware, the Cayman Islands and the Channel Islands, reducing administrative requirements and enabling documentation to be simplified.

Scope

These changes will be applicable to any ELP or SLP which registers as a PFLP.

A limited partnership may register as a PFLP at or at any time after its establishment, provided that it is a collective investment scheme for the purposes of the Financial Services and Markets Act 2000 ("CIS") or would be a CIS, but for the availability of an applicable exemption.

Changes

These include:

- The introduction of a "white list" of permissible activities for limited partners which will not be treated as "taking part in business" and therefore will not bring a risk of loss of limited liability.
- Removal of certain duties upon limited partners (unless the partnership agreement provides otherwise).
- Removal of the requirement for limited partners to make any capital contribution, with partners being free to contribute capital or loans (or to make no contribution).
- Removal of the prohibition upon the return of capital prior to winding up.
- Removal of the requirement to register the amount of capital contributed, the purpose of the partnership and its duration or term.
- Removal of the requirement for a court order to wind up a limited partnership where the general partner has been removed.
- Removal of the need to "Gazette" transfers of limited partner interests (the requirement will remain for the change of the status of an interest from a general partner interest to a limited partner interest).



SLPs and the Persons with Significant Control (“PSC”) regime

Since 6 April 2016, UK companies and LLPs have been required to identify and publicise details of PSCs. The PSC regime has, with effect from 26 June, 2017, now been extended to cover SLPs.

The regime requires SLPs to deliver information relating to their PSCs to Companies House. Unlike UK companies and UK LLPs, SLPs will not need to keep their own PSC register.

Who is a PSC in relation to an SLP?

A person who:

- a) holds the right to more than 25% of the SLP's surplus assets on a winding up;
- b) holds more than 25% of voting rights;
- c) holds the right to appoint or remove the majority of the persons who are entitled to take part in the management of the SLP;
or
- d) has the right to exercise, or actually exercises, significant influence or control over the SLP.

Applying the above tests, PSCs for an SLP would likely include the general partner and any limited partner whose interest exceeds 25% of total interests.

Timing

SLPs which are in existence before 24 July 2017 will require to deliver to Companies House, the details of any PSCs by 7 August 2017 (or if established later, within 14 days of such date).

There will also be an ongoing obligation on SLPs to:-

- notify Companies House of any changes to their PSCs within 14 days of any changes having been confirmed; and
- deliver an annual confirmation statement to Companies House identifying their PSCs.

Conclusion

Paul would be very happy to assist with any enquiries on the formation, reorganisation or regulation of SLPs (whether PFLPs or otherwise) or relative to the application of the PSC regime to SLPs.

