A new limited partnership regime for private funds

The Legislative Reform (Private Fund Limited Partnerships) Order 2017 ("LRO") amending the Limited Partnerships Act 1907 (the "LPA") came into force on 6 April 2017. It introduced a Private Fund Limited Partnership ("PFLP") structure, reducing the administrative and financial burdens for funds under the previously existing limited partnership structure. The LRO also delivers a 'white list' of permitted activities for limited partners that they may carry on without being considered to be managing the partnership and thereby jeopardising their limited liability status. Changes to capital provisions mean that limited partners will no longer be required to make capital contributions. Accordingly, the PFLP structure is expected to be popular among private equity and venture capital funds.

### PFLP

The LRO enables a limited partnership which is an investment fund to be designated as a PFLP, provided the partnership is constituted by an agreement in writing and is a collective investment scheme. The PFLP structure is only available to private investment funds that are not authorised to be promoted to retail consumers, such as private equity and venture capital funds. In fact, the LRO amends the Financial Services and Markets Act 2000 ("FSMA") so that a PFLP cannot be a contractual scheme eligible for authorisation under Part 17.

The LRO amends some provisions in the LPA to account for the introduction of the PFLP structure. For example:

- limited partners, invariably the investors, will not now need to contribute capital to the PFLP and so could, for instance, make purely loan contributions;
- limited partners will not be subject to the statutory duties in the Partnership Act ("PA") 1890 to render accounts and information (section 28) and to account for profits made in competing businesses (section 30) so reducing the need to disapply these sections in the fund's limited partnership agreement as was the case previously;
- PFLPs will not need to register or update details considered to be of no significance to the public, notably the nature of the business and the term of the partnership; and
- PFLPs will not need to publicise certain changes to the partnership in the Gazette.

Significantly, the LRO introduces the so-called 'white list' of activities that limited partners can carry on without being deemed to be carrying on "management" activities which should be reserved for the general partner. White list activities include, for example:

- providing guarantees;
- approving partnership accounts;
- reviewing or approving valuations of the partnership's assets;
- consulting or advising with the general partner or fund manager about the affairs of the partnership; and
- taking part in decisions regarding changes in the persons responsible for the day-to-day management of the partnership.

The white list activities reflect the more advisory, consultative nature of the limited partner/investor, for example where they have an active interest in appointments to advisory committees, and views on investment strategy. This is a role distinct from the general partner's day-to-day operational and management role. However, whilst the white list might provide some comfort to limited partners concerned about their liability, they need to be mindful of whether participation in some of these activities could bring them within scope of the FSMA Part XII Control over Authorised Persons regime.

### Controllers

Under section 178 of FSMA any person proposing to acquire or increase control over an authorised firm must give the PRA or FCA as appropriate notice in writing before making the acquisition. The acquisition is then...
A new limited partnership regime for private funds

subject to assessment by the relevant regulator who will decide whether or not it is to be approved. Failure to make the requisite notification ahead of acquisition is a criminal offence. Most acquisitions by private equity funds of authorised firms will be subject to FCA assessment. This will apply to investors who, by virtue of their holding or influence, may find themselves to be controllers for the purposes of FSMA.

Under section 181 of FSMA, controllers are defined as persons who:
- hold shares in or are entitled to exercise voting power in an entity or its parent above certain specified thresholds; or
- hold shares or voting power in an entity or its parent, the result of which enables those persons to exercise significant influence over the management of the entity.

The change that the LRO potentially brings to bear on the running of funds is whether a limited partner could be deemed to be exercising significant influence over the management of the entity if it carries on some or all of the white list activities. For instance, consulting on or advising the general partner or fund manager about the affairs of the partnership, and taking part in decisions regarding changes in the persons responsible for the day-to-day management of the partnership could potentially result in limited partners having to make notifications about their status as controllers under FSMA.

Conclusion

This new PFLP structure may be appealing to investors and the structuring of new funds. The explanatory document issued by HM Treasury provides that the new PFLP is necessary to ensure the UK remains an attractive domicile for funds when compared to other jurisdictions, such as Luxembourg and the Channel Islands, who have already introduced – or are in the process of introducing – similar provisions. In addition to new funds being set up as PFLPs, we may begin to see existing limited partnerships applying for designation as PFLPs and restructuring investors’ contributions.

The critical point about control for limited partners under the PFLP regime is the second arm of the definition of a controller under FSMA. Whilst it has always been the case that anyone who is a controller within the FSMA definition is required to make a notification to the regulator when acquiring controlling interests in a firm, what might change, as a result of the introduction of the white list, is that investors who look to it for a safe harbour to protect their limit on liability might not appreciate that where they agree additional powers, these powers may make them controllers, because of the “significant influence” they can exercise over the partnership.

For further information, please contact:

David Heffron
Partner
T: +44 (0)20 7490 6500
M: +44 (0)7775 586377
E: david.heffron@pinsentmasons.com

Ian Warner
Partner
T: +44 (0)20 7418 9536
M: +44 (0)7795 126912
E: ian.warner@pinsentmasons.com

Elizabeth Budd
Partner
T: +44 (0)20 7054 2657
M: +44 (0)7469 377289
E: elizabeth.budd@pinsentmasons.com

Elaine MacGregor
Senior Associate
T: +44 (0)141 249 5436
M: +44 (0)7585 996075
E: elaine.macgregor@pinsentmasons.com

Anita Ives
Financial Regulation Executive
T: +44 (0)20 7490 6966
M: +44 (0)7342 076665
E: anita.ives@pinsentmasons.com

Josie Day
Senior Practice Development Lawyer
T: +44 (0)20 7490 9374
M: +44 (0)7799 408293
E: josie.day@pinsentmasons.com

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

Pinsent Masons LLP is a limited liability partnership, registered in England and Wales (registered number: OC333653) authorised and regulated by the Solicitors Regulation Authority and the appropriate jurisdictions in which it operates. The word “partner”, used in relation to the LLP, refers to a member or an employee or consultant of the LLP, or any firm or equivalent standing. A list of the members of the LLP, and of those non-members who are designated as partners, is available for inspection at our registered office: 30 Crown Place, London, EC2A 4ES, United Kingdom. © Pinsent Masons 2017.

For a full list of the jurisdictions where we operate, see www.pinsentmasons.com