



The Association of Real Estate Funds  
Camomile Court, 23 Camomile Street,  
London, EC3A 7LL  
+44 (0)20 7269 4677  
info@aref.org.uk

Business Frameworks Directorate  
Department for Business, Energy and Industrial Strategy  
1<sup>st</sup> Floor, 1 Victoria Street  
Room 3C/04  
100 Parliament Street  
London  
SW1P 0ET

Response sent to: [ReviewofLimitedPartnershipLaw@BEIS.gov.uk](mailto:ReviewofLimitedPartnershipLaw@BEIS.gov.uk)

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## **REFORM OF LIMITED PARTNERSHIP LAW**

### **1. BACKGROUND TO AREF**

The Association of Real Estate Funds (AREF) is the voice of the real estate funds industry. AREF represents over 60 funds with more than £60 billion AUM.

### **2. BACKGROUND TO AREF'S INTEREST IN THIS CONSULTATION**

2.1 AREF members have a material interest in the subject matter of the consultation from a number of different perspectives. Broadly speaking, the views expressed in this response are common to each of these perspectives; nonetheless, it is important to understand each of these perspectives separately (as well as collectively) in order to ensure that in meeting the chief objective of the consultation proposals (i.e. the prevention of criminal activity) all facets of the UK's mainstream real estate funds industry are protected from harm.

2.2 The most important perspectives that AREF members have as regards the use of UK limited partnerships are as follows:

- (a) Where a fund manager wishes to establish a new investment fund (usually an "alternative investment fund" ("AIF") under the Alternative Investment Fund Managers Directive ("AIFMD")) in the form of a UK limited partnership;
- (b) Where a fund manager wishes, for bona fide structuring reasons, to establish a new asset holding entity that sits between one of its investment funds and an underlying real estate asset;

- (c) Where a fund manager wishes to establish a carried interest scheme as part of the launch of a new investment fund;
  - (d) Where a fund manager wishes to establish a feeder fund, to facilitate co-investment by senior executives, as part of the launch of a new investment fund;
  - (e) Where a fund wishes, as part of the implementation of its investment strategy, to form a legal joint venture with another investor in order to co-own a real estate asset;
  - (f) Where a fund manager has a client who wishes to set up a bespoke segregated investment management mandate (sometimes called a "separately managed account" or SMA) and for a variety of reasons the fund manager and its client prefer to structure this arrangement through a fund structure (usually referred to as a "fund of one").
- 2.3 As noted in the consultation, Scottish limited partnerships (SLPs) play a very important role alongside limited partnerships in other parts of the UK, principally due to difficulties that can arise when a prospective partner in an English/Welsh limited partnership does not have legal personality.
- 2.4 We have set out our response to each question raised in the consultation paper under separate headings below, after first making some general observations.
3. **GENERAL POINTS**
- 3.1 AREF is very supportive of BEIS' aim of preventing UK limited partnerships being used for criminal activity.
- 3.2 However, with the UK real estate funds industry facing material pressures due to the impact of Brexit, it is also vitally important that the measures taken by BEIS are both proportionate and targeted only at those engaging in criminal activity. We suggest it is important to compare the current regime for UK limited partnerships not only with the existing requirements for private companies, but also with the limited partnership requirements in other jurisdictions. At a time when Luxembourg has successfully introduced a new Anglo-Saxon style limited partnership regime (through the introduction of the SCSp), and Ireland is in the process of revamping its limited partnership regime in response, it is vitally important for UK real estate fund managers to continue to want to use, and to be able to use, UK limited partnerships.
- 3.3 The private fund limited partnership (PFLP) regime, which took effect in April 2017, introduced useful legislation for those UK limited partnerships so designated as PFLPs. The PFLPs legislation has helped keep the UK system fit for purpose. It would be unfortunate if as a consequence of the Consultation that progress was negated. We suggest that, in respect of each relevant proposal, it is appropriate to have a specific carve-out for PFLPs.
4. **CONSULTATION QUESTION 1**
- 4.1 From the point of view of UK based real estate fund managers, there have not been any legal, regulatory or market-driven changes in recent years that have caused a sudden and

material increase or decrease in the use by managers of UK limited partnerships, either for the fund vehicles themselves or as entities through which the funds invest into underlying real estate assets. The introduction of the PFLP in April 2017 has been a positive development, but has not resulted in a particular increase in the use of English limited partnerships (ELPs) or SLPs as a vehicle in fund structuring.

As a result of Brexit, there is definitely an increase in the number of UK based managers who are looking to use Luxembourg SCSps for their fund vehicles. However, while this trend is noticeable, we would certainly not expect it to result in a sudden and material reduction in registrations of UK limited partnerships of a kind that would cause the UK authorities to ask questions about whether UK partnerships were being misused. We do not have any experience of UK limited partnerships being used as enablers of criminal activity.

- 4.2 We are still seeing Scottish limited partnerships (SLPs) being used as part of fund structures (e.g. as carried interest vehicles or feeder partnerships) notwithstanding that SLPs are now subject to the PSC regime. This is likely to be due to the fact that SLPs have never been used by managers in a fund structuring context as a means of avoiding transparency.

5. **CONSULTATION QUESTION 2**

Our view depends in part on what is meant by the words "required to demonstrate". In a fund structuring context, invariably there will be an external law firm involved, assisting the fund manager with the establishment of the relevant limited partnership. Such a law firm is of course subject to the rules of the Solicitors Regulation Authority. We think that presentation of a Form LP5/LP7 by a UK law firm should automatically be acceptable.

6. **CONSULTATION QUESTION 3**

We believe that registrations by overseas presenters should be permitted, so long as the presenter is: (i) regulated to at least an equivalent standard as applies to UK presenters, and (ii) subject to AML laws and regulations in the presenter's home jurisdiction which are at least as stringent as the equivalent UK laws and regulations.

7. **CONSULTATION QUESTION 4**

- 7.1 AREF would strongly prefer that fund managers using UK limited partnerships are not required to keep the Principal Place of Business (PPoB) of those partnerships in the UK. Requiring a UK service address should be acceptable where the PPoB moves to a non-UK location. If the UK is to remain competitive, post Brexit, as a jurisdiction for fund establishment, it is vital that fund managers have as much flexibility as possible. Note that the fund managers we are talking about here are typically regulated by the UK Financial Conduct Authority (FCA), so the risk of a foreign PPoB being used as part of criminal activity is clearly extremely low. AREF therefore strongly prefers Option B to Option A. The requirement to have a service address in the UK gives sufficient connection with the UK and would enable the UK authorities to contact a UK limited partnership, and issue proceedings in relation to a UK limited partnership, more easily than if it only has an overseas address.

- 7.2 In addition, under the AIFM Directive, the principal management entity of a UK limited partnership (provided it has the requisite regulatory licence) can be based in any other EU

country. As such, the concept of the PPOB being where the "main activity" is taking place would cut across the clear principles of this EU Directive (for so long as it applies in the UK).

7.3 Finally, we note the comment at paragraph 84 of the consultation that a "remarkably low" number of PPOBs have changed in the past 4 years. On the basis that most legal practitioners specialising in investment funds take the view that the PPOB is akin to a registered office and does not have to be where the main staff are/business activity is located, we would not actually expect many firms to move their PPOB very often at all.

#### 8. CONSULTATION QUESTION 5

8.1 AREF feel very strongly that there should not be any requirement for the partnership's main business activity to be carried on at the PPOB. In the real estate (and wider) funds community this could make UK limited partnerships very unattractive as compared to other (equally well-regulated) jurisdictions.

8.2 Moreover, until such time as England allows the establishment of limited partnerships with separate legal personality, it is unrealistic to think that every Scottish limited partnership will have its main headquarters (i.e. staff) located in Scotland. As such, it is essential for the UK real estate funds industry that fund managers based in England continue to be able to establish SLPs with relative ease.

#### 9. CONSULTATION QUESTION 6

We see the benefit of introducing a requirement for all limited partnerships to file an annual confirmation statement, particularly if it can be used by the Registrar as part of any strike-off procedure that may be adopted as a result of this consultation.

#### 10. CONSULTATION QUESTION 7

10.1 As mentioned above, the statement should merely confirm that the information previously provided to Companies House remains correct to the best knowledge and belief of the general partner.

10.2 AREF disagrees that the confirmation should cover the sum contributed by each limited partner and/or the nature of the contribution (see paragraph 103). These items are now disapplied for Private Fund Limited Partnerships (PFLPs) on the grounds that they were considered irrelevant in practice.

#### 11. CONSULTATION QUESTION 8

11.1 AREF does not consider that there is a case for such change and believes strongly that such a requirement should not be introduced.

11.2 If the government is minded to disagree with AREF on this, then AREF asks that the requirement is disapplied for all current limited partnerships and also for all future PFLPs.

- 11.3 In the context of real estate funds there is already transparency provided by the general partner to the limited partners in accordance with the requirements of the fund partnership agreement - which typically requires the manager/general partner to provide audited annual accounts within 120-180 days as well as interim quarterly reports. Increasingly, very detailed additional reporting is provided to investors by way of side letter requirements. As a tax transparent vehicle, it is not appropriate to collate financial information at the level of the limited partnership - being as it is, a pass-through entity. However, it is generally not in the interest of the fund investors or the fund manager for detailed information about the fund to end up in the public domain.
- 11.4 AREF notes that there is no requirement for a Luxembourg SCSp to file its accounts publicly, and the UK government should not do anything that risks driving real estate funds industry business away from the UK to Luxembourg.
12. **CONSULTATION QUESTION 9**
- 12.1 Yes, AREF agrees with the Registrar having this power where a limited partnership has genuinely ceased to carry on business and has been wound up. However the power would have to be used carefully and sparingly and only:
- (a) after appropriate and detailed checks; and
  - (b) after a specific legislative provision has been added into UK law to the effect that no limited partner shall lose the protection of limited liability at any time after the striking off takes place (unless such limited partner has participated in management and thereby done something which would have caused it to forfeit its limited liability in any event).
- 12.2 AREF's main concern relates to the consequences of striking off a limited partnership because of an administrative error. BEIS states that it believes this concern is countered by applying the Companies Act procedure of writing letters to the PPOB and placing public notices. However, in AREF's view this does not remove the concern.
- 12.3 Limited partners have little to no involvement in administrative matters because they cannot engage in the management of a limited partnership without it affecting their limited liability. A limited partnership that is still a partnership at law, but which has become struck off the register of limited partnerships, would become a general partnership, and the limited partners would potentially suffer very serious adverse consequences because they would lose their limited liability (despite having no control at all over the circumstances leading to the striking off).
- 12.4 AREF notes that BEIS is proposing that the ability to apply to restore a limited partnership to the register would correct this, however the burden would still remain on limited partners to check that filings are being made and that no such striking off has occurred. It is also not clear that Companies House would restore a limited partnership to the register simply because a general partner has neglected its administrative duties.

13. **CONSULTATION QUESTION 10**

Given the difficulty in any outside party determining whether a partnership exists or not (it being a question of fact, under UK law), AREF does not consider that it would be helpful in practice for the Register to have a list of other factors to take into account.

14. **CONSULTATION QUESTION 11**

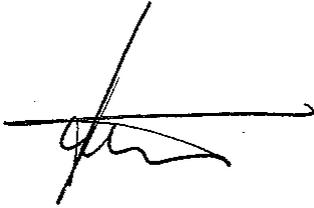
As mentioned at 12.1 above, a specific legislative provision would need to be added into UK law to the effect that no limited partner shall lose the protection of limited liability at any time after the striking off takes place (unless such limited partner has participated in management and thereby done something which would have caused it to forfeit its limited liability in any event).

15. **CONCLUSION**

AREF would be pleased to meet with representatives from BEIS to discuss further the issues raised in the consultation and these responses on behalf of AREF's members.

If you have any queries or require further information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Cartwright", written over a horizontal line.

John Cartwright  
Chief Executive