

Corporate
Case Law Update
Rosling King LLP



Following extensive lobbying by the UK funds industry to reform the UK's limited partnership ("LP") laws and a consultation back in 2015, changes in the law finally became effective on 6 April 2017.

On 6 April 2017 the Legislative Reform (Private Fund Limited Partnerships) Order 2017 (the "**PFLP Order**") came into effect and amended the Limited Partnership Act 1907 and the Partnership Act 1890 to introduce Private Fund Limited Partnerships ("**PFLPs**"). As the name suggests, a PFLP is a new form of LP which aims to reduce the administrative and financial burdens on private investment funds set up as LPs.

Designation as a PFLP

Existing LPs and new LPs may apply to Companies House to be designated a PFLP if they satisfy the private fund conditions, i.e. the LP must be constituted by an agreement in writing and must be a collective investment scheme as defined in section 235 of the Financial Services and Markets Act 2000. It is important to note that once a LP has been designated a PFLP, it will not be able to return to its LP status.

The key differences between a new PFLP and the current LP reflect the intention to remove some of the hurdles for investors using a LP structure.

Capital Contributions

Like the current LP, a PFLP will have one or more general partners who are responsible for the management of the LP's business and who have unlimited liability for the LP's debts and obligations. The PFLP will also have limited partners who take no active role in the operation of the LP's business in exchange for limited liability. However, in contrast to a current LP, the limited partners of a PFLP are not required to contribute capital or property to the PFLP. Further, in the event that limited partners of a PFLP do contribute capital or property, they may withdraw this contribution without being liable for any debts or under any obligations to the amount withdrawn.

Limited partners' involvement in the management of the PFLP business

As noted above, under a traditional LP structure, limited partners may not be involved in the management of the business of the LP. The PFLP structure recognises that investors should be able to carry out normal activities such as monitoring the performance of investments without incurring liability in respect of the PFLP's debts. The PFLP Order introduces a non-exhaustive list of activities which a limited partner may undertake without being deemed to have taken part in management and therefore without incurring liability. This 'white list' includes, amongst others, activities such as taking part in decisions about the variation of a term of the partnership agreement, approving the accounts of the PFLP and consulting and advising with a general partner about the affairs of the PFLP.

Rights against outgoing partners

In a LP, a general partner who has ceased to be a general partner, remains liable for the commitments entered into by the LP up to his cessation as general partner, until the LP has notified the change in the Gazette. The PFLP structure dispenses with this. Furthermore, it is no longer necessary to serve a Gazette notice where a person is to become a limited partner or where a limited partner of a PFLP is assigning its share to the LP. This alleviates some of the administrative burdens of LPs.

Rendering of accounts

Limited partners of a LP are required to render accounts and information to other partners of the LP and are under a duty not to compete with the LP. The PFLP structure recognises that these duties are inconsistent with the role of an investor in an investment fund and they therefore do not apply to PFLPs.

Winding up of an PFLP

A LP will be wound up by its general partners (unless a court has ordered otherwise and providing the general partners are solvent). This remains the case where the PFLP has a general partner at the time of dissolution (subject to what has been agreed between the partners). Where the PFLP does not have a general partner at the time of dissolution, the PFLP must be wound up by a person who is not a limited partner. This allows the limited partners to appoint a third party to wind up the PFLP's affairs without the need to obtain a court order and court supervision.

Comment

The new PFLP structure mirrors similar structures in jurisdictions where such funds are prevalent (e.g. Luxemburg and the Channel Islands), thus enabling more investor control/involvement. The list of permitted activities that a limited partner in an PFLP may undertake without incurring liability will allow limited partners to, for example, carry out the role of employees of private equity managers (usually the general partner) without incurring liabilities. This may be particularly attractive to institutional or high net worth investors as they may be allowed to vote on the general partners' proposals as part of an advisory committee, enabling the monitoring of investments and decisions. The new PFLP structure should encourage investment funds to be domiciled in the UK. This comes at a good time now that the Brexit process has been triggered and the promotion of investment into the UK is essential.