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HM Treasury
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By email: lp.consultation@HMTreasury.gsi.gov.uk

Proposal on using Legislation Reform Order to change partnership legislation for private equity investments

We, the Association of Real Estate Funds (AREF), welcome the opportunity to comment on the above proposal. AREF is the voice of the UK real estate funds industry and has about 65 member funds with a collective net asset value of £55 billion under management. 10 of those funds are UK limited partnerships.

You can find our views on the consultation questions in the Appendix. We look forward to hearing the outcome of this consultation. In the meantime, if you require any further information, please free to contact me.

Yours sincerely

Jacqui Bungay
Policy Secretariat
The Association of Real Estate Funds

AREF

APPENDIX

Proposal on using Legislation Reform Order to change partnership legislation for private equity investments

Q1. What are your views on the proposed process for designating private fund limited partnerships?

We agree that private fund vehicles should be designated on the register of limited partnerships (the "register"). We would recommend that there is a separate form for registering private funds (e.g. "Form LP5(PF)") rather than adapting the current registration form. This will avoid any risk of confusion or a firm inadvertently failing to 'tick a box' and ending up with the incorrect designation.

We question whether there should be a need for a solicitor's certificate as this is likely to increase costs and cause delay. We understand that it can sometimes be difficult, even for an experienced legal practitioner, to confirm unequivocally whether or not a PFLP is a Collective Investment Scheme. Solicitors may also not have the requisite knowledge to be able to provide an unqualified certificate. It should be sufficient for the general partner to provide the relevant confirmations.

Also, we question why there needs to be a time limit of one year for existing funds to become designated as PFLPs. If a partnership meets the requirements for designation as a private *fund* and *"wants to benefit from the greater flexibility that will be available in the proposed private fund regime",* it should be capable of designation at any time. There does not seem to be any obvious policy reason for imposing a one year time limit, for example, designation would not have any tax or regulatory consequences.

Q2. What are your views on the measures to allow the registrar to remove from the register entries for inactive private fund limited partnerships?

We have no objections to this proposal. However, we consider that the consequence of removal of a PFLP should not include a loss of the limited liability status of the limited partners (which would arise as a consequence of the PFLP becoming a general partnership). We suggest that an application to remove a PFLP from the register should be able to be made at the direction of the general partner/partners, rather than by all partners at the time of the application (which is unduly cumbersome).

Q3. Is there uncertainty around what actions constitute "taking part in the management of the partnership business"?

There is currently significant uncertainty around what actions constitute "taking part in the management of the partnership business". This gives a disadvantage to the UK over other jurisdictions that do not impose such restrictions or simply provide greater clarity on the activities that constitute management. This uncertainty can lead to additional costs for investors as legal advice is typically needed to ensure management arrangements are appropriately structured.

Although in some partnerships investors want to be entirely passive, it is common for limited partners to seek some level of involvement, for example consultation on major strategic investment decisions or changes to the business plan of the partnership. This can lead to prolonged discussion when establishing a partnership between the investors and the general partner over the boundaries under the legislation, which in turn can lead to unnecessary tension between the parties. It would be advantageous for the boundaries to be clear and, as far as possible, for the level of involvement to be a commercially-driven matter only.

Q4. Does the proposed list in the draft order cover the type of activities a limited partner is likely to undertake in monitoring and assessing the performance of a private fund? Are there any activities that should not be on the list?

The list of activities should enable the UK to compete with other jurisdictions. As noted above, investors often seek a level of involvement in decision-making that is not clearly possible under the existing legislation. Providing greater clarity and potentially more flexibility to agree a framework for LP involvement in management will be beneficial.

However, we do have some concerns with some of the activities proposed which may not be acceptable to a number of general partners. Accordingly, we suggest it should be made clear in the LRO that the white listed activities can be prohibited/overridden by a term of the Limited Partnership Agreement (so that the white list is in effect a 'safe harbour' for certain activities, in circumstances where the general partner is willing as a commercial matter to allow the limited partners to engage in those activities).

Q5. Is any purpose served by the requirement that a limited partner make a capital contribution, no matter how nominal?

No, in the context of a partnership that operates as a private fund, there is no need for legislation to require a capital contribution to be made. The form of the commitment of a limited partner to a partnership will be determined based on the specific circumstances of the business of the partnership.

Q6. Should a limited partner be allowed to withdraw their capital during the life of partnership? If so, should they remain liable for the amount withdrawn?

If a capital contribution were made by a limited partner, this should be capable of being withdrawn at any stage and there should be no liability for the amount withdrawn. Legislation should not prohibit the withdrawal of capital from a partnership and, in practice, the constitution of the private fund will dictate the terms for withdrawal. This will also be the case for any ongoing liability in relation to the original capital committed but withdrawn. This does not need to be imposed by the legislation.

Q7. If limited partners are allowed to withdraw their capital, should any other conditions be put in place?

No. It is noted above that limited partners should not be prohibited from withdrawing their capital and there should not be other conditions in the legislation. Any terms and conditions for withdrawal of capital should be determined by the constitution of the partnership.

Q8. Should the limited partners in a private fund be allowed to agree among themselves who should wind up the partnership without having to obtain a court order?

We have no objections to this proposal.

Q9. Should the requirement to register the amount of capital be removed for private funds?

We agree that the requirement to register the amount of capital should be removed for private funds. It serves no useful purpose.

Q10. Should the requirement to register the general nature of the limited partnership's business and the term of the limited partnership be removed for private funds?

We agree that the requirement to register the general nature of the limited partnership's business and the term of the limited partnership should be removed for private funds

Q11. What are your views on the requirement to advertise a notice in the Gazette? Does is present any specific problems? Is it appropriate to remove the requirement for private funds?

We believe that there is no benefit in placing an advertisement in the Gazette. This requirement should be removed.

Q12. Should the duties to render accounts and information, and to account for profits made in competing businesses, be removed for limited partners in private funds?

We believe that limited partners in private funds should not need to account for profits made in competing businesses.

Private fund investors often have significant interests in competing funds and businesses either directly or indirectly. However, the investors are typically passive and not involved with day to day management and therefore we agree with this proposal.

Q13. Do you have any comment on the interaction of the legislation for authorised fund limited partnerships and the proposed legislation for private fund limited partnerships?

We have no comments.