



Jonathan Rushforth
HM Treasury
1 Horse Guards Road
London
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21 January 2013

Dear Jonathan,

Re: Competitiveness of the UK asset management industry – Limited Partnership reform

Thank you for taking the time to meet with us to discuss the competitiveness of the UK asset management industry in light of the regulatory landscape and economic environment. In particular, we discussed the need to reform UK Limited Partnership law to ensure that the UK continues to have a fund vehicle that is both investor-friendly and compatible with the Alternative Investment Fund Manager's Directive. As you know, the Limited Partnership is the market standard structure for private equity and venture capital funds, as well as many other types of private fund. This is therefore a vital matter for our industry and for the UK's position at the centre of it.

We are keen to work with you on this area and have set out below, on a preliminary basis and subject to further consultation with our members, a number of changes to the existing law which we believe will make UK Limited Partnerships more competitive given new offerings from other European countries. We believe that these amendments could be made as part of the UK's implementation of the AIFMD as a specific change that would only apply to Alternative Investment Funds.

Specific amendments required to limited partnership law

We responded to the 2008 DBERR Consultation on Limited Partnership reform and all the points below, with the exception of 4, 10 and 12, were included in BIS's list of recommended changes. We have not sought to justify each of the proposed changes on the basis that BIS has already analysed them from a policy perspective before putting forward their recommendations. Our list of suggested amendments includes comments on proposals being put forward by Luxembourg which could be viewed more favourably as a potential jurisdiction in which to locate new private equity and venture capital funds (or relocate existing funds) by managers and investors.

1. Remove the requirement for a limited partner to make a capital contribution (although they may do so if they wish), and expressly state that partners are permitted to loan money to a Limited Partnership and that this loan will not be subject to any rules on return of capital.
2. If a limited partner does contribute capital, provide it should be able to withdraw that capital, subject to any agreement between the partners and to registration of the withdrawal at Companies House. Under the new Luxembourg law, capital returned to partners by way of distribution of profits or reimbursement of partnership interests cannot be recalled, unless otherwise provided for in the Limited Partnership agreement. BIS recommended a further qualification in that following a withdrawal of capital by a limited partner, that limited partner would remain liable for the debts and liabilities of the Limited Partnership up to the amount of capital withdrawn until the end of the period of twelve months after the date of registration; however, we would prefer that the same approach is adopted as the new Luxembourg law (namely, that any capital returned to partners by way of distribution of profits or reimbursement of partnership interests cannot be recalled).
3. Provide a list of activities that limited partners are allowed to undertake without jeopardising the limitation of their liability (by being deemed to become involved in management). This should provide greater assurance to limited partners that they are able to monitor their



investments in a normal way without exposing themselves to unlimited liability. There should also be a power for the Secretary of State to amend the list by statutory instrument subject to the affirmative procedure. The new Luxembourg law sets out a non-exhaustive list of actions which a limited partner may perform without forfeiting its limited liability.

4. If a limited partner does get involved in management, provide that this may only give rise to liability to third parties from the date of such management for that particular limited partner and not to other partners. This was not included in our previous response, but is expressly stated in the new Luxembourg law. It is critical from an investor's perspective that its liability is limited to the amount of its investment (in the same way as if it had invested in shares in a company) and that the act(s) of a separate investor cannot jeopardise the level of the first investor's liability.
5. Clarify that a limited partner will not owe certain statutory duties which a normal partner owes. For example, he will not have to account to the other partners for profits made elsewhere.
6. Confirm that the Limited Partnership will exist from the date of its registration (and not before).
7. Exclude the following information from information required for the public register: the date of formation of the Limited Partnership if it predated registration; the general nature of the Limited Partnership's business and the term for which the Limited Partnership is entered into.
8. Relax the rules about winding up a Limited Partnership in the event of dissolution so that the general partners should continue to have responsibility for winding it up or for appointing a suitably qualified person to do so, but that if there is more than one they should be able to agree among themselves which of them should carry out, or appoint another person to carry out, the winding up. If there are no general partners, then the limited partners are responsible and will be able to agree among themselves which of them is responsible and proceed without needing to apply for a court order. All of this will be subject to any court order providing for a different arrangement. In addition, make it absolutely clear that the partners can appoint a third party to wind up the Limited Partnership if they wish.
9. Clarify the rules relating to an assignment of a limited partner's interest to another person (to make it clear that the assignee can replace the assignor as a limited partner if all the general partners agree or the substitution is made in accordance with the Limited Partnership agreement) and abolish the requirement to publish a notice in the London or Edinburgh Gazette to align the law with that applicable to English limited liability partnerships.
10. Remove or modify the requirement to register the names of the limited partners. This is a feature of the reformed Luxembourg law. This is important for some investors, and we do not see any policy objection since the limited partners are not permitted to take part in management (and so cannot bind the Limited Partnership or represent it in dealings with third parties), they have limited liability and, if the proposal in 1. is adopted, have no requirement to contribute capital. If it is felt that there needs to be a register showing the names of limited partners which have subscribed capital, then the register could only include those limited partners and not name those who have not done so.
11. Provide that certain details that require notification to the registrar (including change of name and address) will only take effect when they are registered.
12. Provide the option to elect for legal personality when registering a Limited Partnership. This was not included in our previous response, but was proposed by the Law Commission and is a feature of the limited partnership laws of many other countries and states (including Jersey, Guernsey as well as Luxembourg under the new law). It is important because legal personality allows the Limited Partnership to be a partner in other partnerships (essential for funds of funds, and useful for most other funds) and to own shares.



13. Include a new procedure for de-registering a Limited Partnership following dissolution (or in certain other limited circumstances) so that Limited Partnerships do not stay on the register after they cease to exist.

In our previous response we suggested replacing the requirement to name the “principal place of business” with “registered office.” We no longer consider it necessary to make this amendment and in light of some provisions in the AIFMD believe that it could be unhelpful.

We would be happy to meet with you to explain the background to these proposals in more detail. Thank you again for your time on this matter and please do not hesitate to contact me or Gurpreet Manku at the BVCA for further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Witney'.

Simon Witney
Chairman, Legal & Technical Committee