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**2015 No. 0000**

**REGULATORY REFORM**

**The Legislative Reform (Limited Partnerships) Order 2015**

*Made*     -   -   -   -     \*\*\*

*Coming into force*   -   -     \*\*\*

The Treasury make the following Order in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006(a).

For the purposes of section 3(1) of that Act, the Treasury consider that the conditions under section 3(2) of that Act are satisfied.

The Treasury have consulted in accordance with section 13(1) of that Act.

The Treasury laid a draft Order and explanatory document before Parliament in accordance with section 14(1) of that Act.

Pursuant to section 15 of that Act, the negative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

Neither House of Parliament resolved, within the 40 day period referred to in section 16(3) of that Act, that the Treasury should not make the Order.

**Citation, commencement and interpretation**

- 1.—(1) This Order may be cited as the Legislative Reform (Limited Partnerships) Order 2015.
- (2) This Order comes into force on [date].
- (3) In this Order “the Act” means the Limited Partnerships Act 1907(b).

**Amendment of the Limited Partnerships Act 1907**

- 2.—(1) The Act is amended as follows.
- (2) In section 3 (interpretation of terms) at the end insert—

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(a) 2006 c. 51. Sections 1(6) and 13(1) were amended by S.I. 2007/1388. See section 32 for the definition of “Minister of the Crown”.  
(b) 1907 c. 24.

i“Private fund limited partnership” means a limited partnership that is designated under section 8(2) as a private fund limited partnership.î.

- (3) In section 4 (definition and constitution of limited partnership)(a)—
- (a) in subsection (2) omit the words from “, who shall at the time” onwards;
  - (b) after subsection (2) insert—
    - i(2A) Each limited partner in a limited partnership that is not a private fund limited partnership shall, at the time of entering into the partnership, contribute to the partnership a sum or sums as capital or property valued at a stated amount, and shall not be liable for the debts or obligations of the firm beyond the amount so contributed.
    - (2B) A limited partner in a private fund limited partnership—
      - (a) is under no obligation to contribute any capital or property to the partnership unless otherwise agreed between the partners, and
      - (b) is not liable for the debts or obligations of the firm beyond the amount of the partnership property which is available to the general partners to meet such debts or obligations.î;
  - (c) in subsection (3) after “limited partner” insert “in a limited partnership other than a private fund limited partnership”.
- (4) In section 6 (modifications of general law in case of limited partnerships)(b)—
- (a) after subsection (1) insert—
    - i(1A) Subsection (1) is subject to section 6A (permitted activities for limited partners in private fund limited partnerships).î;
  - (b) in subsection (3), after “limited partnership” insert “, other than a private fund limited partnership,”;
  - (c) after subsection (3) insert—
    - i(3A) If a private fund limited partnership is dissolved at a time when there is at least one general partner, the affairs of the partnership must be wound up by those who are general partners at that time, subject to any express or implied agreement between the partners as to the winding up of the affairs of the partnership by them or by a person on their behalf.
    - (3B) If a private fund limited partnership is dissolved at a time when there is no general partner, the affairs of the partnership must be wound up by those who are limited partners at that time, subject to any express or implied agreement between them as to the winding up of the affairs of the limited partnership by them or by a person on their behalf.
    - (3C) References in subsections (3A) and (3B) to partners do not include a partner who is insolvent; and those subsections have effect subject to any order of the court as to the winding up of the affairs of the partnership.î;
  - (d) in subsection (5), after paragraph (e) insert—
    - i(f) a limited partner in a private fund limited partnership is not subject to the duties in—
      - (i) section 28 of the Partnership Act 1890(c) (duty of partners to render accounts, etc), or
      - (ii) section 30 of that Act (duty of partner not to compete with firm).î.
- (5) After section 6 insert—

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(a) Section 4 was amended by the Statute Law Revision Act 1927 (c. 42) and Schedule 7 to the Banking Act 1979 (c. 37), and S.I. 2002/3203 and 2003/2904.  
(b) Section 6 was amended by Schedule 6 to the Companies (Consolidation) Act 1908 (c. 69).  
(c) 1890 c. 39.

### **i Permitted activities for limited partners in private fund limited partnerships**

**6A.**—(1) For the purposes of section 6(1), a limited partner in a private fund limited partnership is not to be regarded as taking part in the management of the partnership business merely because the limited partner does anything that is under subsection (2) a permitted activity.

(2) The permitted activities are—

- (a) taking part in a decision about the variation of the partnership agreement;
- (b) taking part in a decision about whether to allow—
  - (i) a type of investment or a particular investment by the partnership;
  - (ii) the participation by the limited partner in a particular investment by the partnership;
  - (iii) the incurring, extension or discharge of debt by the partnership;
  - (iv) the creation, extension or discharge of any other obligation owed by the partnership;
- (c) taking part in a decision about whether the general nature of the partnership business should change;
- (d) taking part in a decision about whether to dispose of the partnership business or to acquire another business;
- (e) taking part in a decision about whether a person should become or cease to be a partner;
- (f) taking part in a decision about whether the partnership should be dissolved;
- (g) making or taking part in a decision about the winding up of the partnership;
- (h) enforcing rights under the partnership agreement (unless those rights are to carry out management functions);
- (i) approving the accounts of the partnership;
- (j) approving the valuation of the partnership's assets;
- (k) entering into a contract with the partnership or a general partner in the partnership (unless the contract requires the limited partner to take part in management functions);
- (l) acting as a director, member, employee, officer or agent of, or a shareholder or partner in—
  - (i) a general partner; or
  - (ii) another person appointed to manage or advise the partnership in relation to the affairs of the partnership;
- (m) taking part in a decision which involves an actual or potential conflict of interest that affects or relates to the partnership, its business, a partner in the partnership or a person appointed to manage or advise the partnership;
- (n) discussing the prospects of the partnership business;
- (o) consulting or advising a general partner, or the general partners, or any person appointed to manage the partnership, about the affairs of the partnership or about its accounts;
- (p) appointing or nominating a person to represent the limited partner on a committee or revoking such an appointment or nomination;
- (q) taking part in a decision regarding changes in the persons responsible for the day-to-day management of the partnership;
- (r) providing surety or acting as guarantor for the partnership;
- (s) taking part in a decision authorising an action that the general partner proposes to take.

(3) The Treasury or the Secretary of State may by regulations amend the list of activities in subsection (2).

(4) Regulations under subsection (3) are to be made by statutory instrument.

(5) A statutory instrument containing regulations under subsection (3) is subject to annulment in pursuance of a resolution of either House of Parliament.<sup>1</sup>

(6) In section 8 (duty to register)(a)—

(a) the existing provision becomes subsection (1);

(b) after that subsection insert—

i(2) If the application—

(a) includes a request for designation as a private fund limited partnership, and

(b) includes or is accompanied by a certificate signed by a solicitor to the effect that the limited partnership meets the private fund conditions,

the registrar must when registering the limited partnership designate it on the register as a private fund limited partnership.

(3) The private fund conditions are that the partnership—

(a) is constituted by an agreement in writing, and

(b) is a collective investment scheme, or would be such a scheme but for the fact that each of the limited partners is a body corporate in the same group as the general partner<sup>(b)</sup>.

(4) In subsection (3)—

“collective investment scheme” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000<sup>(c)</sup> (see section 235 of that Act), and

“group” is to be read in accordance with section 421(1) of that Act.<sup>1</sup>

(7) In section 8A (application for registration)(d)—

(a) in subsection (1)—

(i) after paragraph (a) insert—

i(aa)state whether the application includes a request for designation as a private fund limited partnership,<sup>1</sup>

(ii) in paragraph (b), after “(2)” insert “or (3)”;

(b) in subsection (2), for “The required” substitute “Except in the case of an application that includes a request for designation as a private fund limited partnership, the required”;

(c) after subsection (2) insert—

i(3) In the case of an application that includes a request for designation as a private fund limited partnership, the required details are—

(a) the name of each general partner,

(b) the name of each limited partner, and

(c) the address of the proposed principal place of business of the limited partnership.<sup>1</sup>

(8) In section 8C (certificate of registration)(e), after subsection (3) insert—

i(3A) If the limited partnership is designated on the register as a private fund limited partnership, the certificate must also state that it is so designated.<sup>1</sup>

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(a) Section 8 was substituted by S.I. 2009/1940.

(b) Such arrangements do not amount to a collective investment scheme for the purposes of Part 17 of the Financial Services and Markets Act 2000 (c. 8) because of paragraph 10 of the Schedule to S.I. 2001/1062.

(c) 2000 c. 8.

(d) Section 8A was inserted by S.I. 2009/1940.

(e) Section 8C was inserted by S.I. 2009/1940.

- (9) In section 9 (registration of changes in partnerships)(a), for subsection (1) substitute—
- i(1) If during the continuance of a limited partnership any change is made or occurs in any of the details listed in subsection (1A), a statement, signed by the firm, specifying the nature of the change shall within seven days be sent by post or delivered to the registrar.
- (1A) The details are—
- (a) in the case of any limited partnership—
- (i) the firm name,
  - (ii) the principal place of business,
  - (iii) the partners or the name of any partner,
  - (iv) the liability of any partner by reason of the partner becoming a limited instead of a general partner or a general instead of a limited partner;
- (b) in the case of a limited partnership that is not a private fund limited partnership—
- (i) the general nature of the business,
  - (ii) the term or character of the partnership,
  - (iii) the sum contributed by any limited partner.î.
- (10) In section 10 (advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner)(b), in subsection (1) after “firm” in the first and third places in which it appears insert “which is not a private fund limited partnership”.
- (11) After section 14 (register and index to be kept)(c) insert—

#### **Striking off a private fund limited partnership on application**

**14A.**—(1) On an application complying with subsections (2) and (3), the registrar may strike off the register the name of a private fund limited partnership.

- (2) The application must—
- (a) list the relevant persons, and
  - (b) state that it is made with the consent of any relevant person who is not an applicant.
- (3) The application must be signed or otherwise authenticated by or on behalf of—
- (a) the general partner or, if there is more than one general partner, all of them;
  - (b) if there is no general partner, all the relevant persons; or
  - (c) any other person who has authority to make the application on behalf of the firm.
- (4) In this section “relevant person” means—
- (a) any person who is a partner at the time of the application; or
  - (b) if the partnership has been dissolved before the application is made, any person who was a partner immediately before that dissolution.

#### **Power to strike off private fund limited partnership not carrying on business or in operation**

**14B.**—(1) If the registrar has reasonable cause to believe that a private fund limited partnership is not carrying on business or in operation, the registrar may send to the firm a communication inquiring whether it is carrying on business or in operation.

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(a) Section 9(1) was amended by S.I. 2009/1941.  
(b) Section 10(2) was amended by S.I. 2009/1941.  
(c) Section 14 was amended by S.I. 2009/1941.

(2) If the registrar does not receive any answer to the communication within one month of sending it, the registrar must within 14 days after the expiration of that month send to the firm a second communication referring to the first communication and stating—

- (a) that no answer to it has been received, and
- (b) that if an answer is not received to the second communication within one month from its date, a notice will be published in the Gazette with a view to striking the firm's name off the register.

(3) If the registrar—

- (a) receives an answer to the effect that the firm is not carrying on business or in operation; or
- (b) does not within one month after sending the second communication receive any answer,

the registrar may publish in the Gazette, and send to the firm, a notice that at the expiration of three months from the date of the notice the name of the firm mentioned in it will, unless cause is shown to the contrary, be struck off the register.

(4) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the firm, strike its name off the register.

(5) The registrar must publish notice in the Gazette of the firm's name having been struck off the register.

(6) In this section "Gazette" has the meaning given by section 10(2).

#### **Effect of striking off under section 14A or 14B**

**14C.**—(1) When a firm is struck off under section 14A or 14B, if the firm has not been dissolved—

- (a) each general or limited partner in the firm remains a partner in the firm, but
- (b) the firm ceases to be a limited partnership.

(2) The striking off of a firm under section 14A or 14B does not affect the personal liability of any partner in respect of the debts or obligations of the firm incurred while the firm was registered as a limited partnership.

#### **Private fund limited partnerships struck off incorrectly**

**14D.**—(1) A private fund limited partnership, or any partner of a private fund limited partnership, may apply for an order under this section if—

- (a) the firm was struck off under section 14A or 14B;
- (b) the firm continues to exist after the striking off; and
- (c) the firm is subsequently registered again as a limited partnership.

(2) If such an application is made, the court may make an order under this section if it considers that—

- (a) it is just and equitable to do so; and
- (b) in the case of striking off under section 14A, the application for striking off was not made by, or with the consent of, all of those who were partners in the firm at the time of the application for striking off.

(3) The order may make such provision as the court thinks fit for putting the firm and any other persons—

- (a) in the position they would have been in if the firm had not been struck off; or
- (b) so near that position as the court considers just and equitable.

(4) The firm must deliver a copy of the order to the registrar.

(5) An application under this section must be made before the end of the period of three years starting with the day on which the firm was struck off.<sup>1</sup>

### **Designation of existing limited partnerships as private fund limited partnerships**

**3.**—(1) This article applies where a firm is registered as a limited partnership under the Act immediately before the day on which this Order comes into force.

(2) Within the 12 months beginning with the day on which this Order comes into force, the firm may apply to the registrar to be designated as a private fund limited partnership.

(3) The application must—

- (a) be made in such manner and accompanied by such information as the registrar may direct; and
- (b) include or be accompanied by a certificate signed by a solicitor to the effect that the limited partnership—
  - (i) meets the private fund conditions set out in section 8(3) of the Act as inserted by this Order; and
  - (ii) is not an authorised contractual scheme as defined in section 237(3) of the Financial Services and Markets Act 2000<sup>(a)</sup>.

(4) If the application meets the requirements of paragraph (3), the registrar must—

- (a) designate the firm on the register as a private fund limited partnership, and
- (b) issue and provide to the firm a certificate stating that the firm has been so designated.

(5) A firm designated as a private fund limited partnership pursuant to this article is to be treated as if it had been designated as a private fund limited partnership under section 8(2) of the Act (as inserted by this Order).

### **Amendment of the Financial Services and Markets Act 2000**

**4.** In section 235A of the Financial Services and Markets Act 2000 (contractual schemes)<sup>(b)</sup>, in subsection (6) after paragraph (a) insert—

i(aa) that the limited partnership is not designated under section 8(2) of the Limited Partnerships Act 1907 as a private fund limited partnership;<sup>1</sup>

### **Amendment of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013**

**5.**—(1) Regulation 16 (modification of the Limited Partnerships Act 1907) of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013<sup>(c)</sup> is amended as follows.

(2) In paragraph (3)—

- (a) omit sub-paragraph (a)(ii);
- (b) after sub-paragraph (a) insert—
  - i(aa) in subsection (2A) there were omitted the words “and shall not be liable for the debts or obligations of the firm beyond the amount so contributed”.<sup>1</sup>; and
- (c) in sub-paragraph (b)—
  - (i) for “subsection (2)” substitute “subsection (2A)”; and
  - (ii) subsections (2A) to (2C) become subsections (2AA) to (2AC);

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<sup>(a)</sup> The definition of “authorised contractual scheme” in section 237(3) was inserted by S.I. 2013/1388.

<sup>(b)</sup> 2000 c. 8. Section 235A was inserted by S.I. 2013/1388.

<sup>(c)</sup> S.I. 2013/1388.

- (iii) in subsection (2AA) after “limited partners” insert “in a limited partnership that is not a private fund limited partnership”;
  - (iv) in subsection (2AB) after “limited partner” insert “in a limited partnership that is not a private fund limited partnership”; and
  - (v) in subsection (2AC) for “Subsection (2B)” substitute “Subsection (2AB)”.
- (3) In paragraph (6)—
- (a) for “subsection (1)” substitute “subsection (1A)”; and
  - (b) in sub-paragraph (a) for “paragraphs (d) and (f)” substitute “paragraphs (a)(iii) and (b)(iii)”.

Date *Name*  
*Name*  
Two of the Lords Commissioners of Her Majesty’s Treasury



## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order enables a limited partnership which is a private investment fund to be designated as a private fund limited partnership (“PFLP”) on registration, and amends some of the provisions of the Limited Partnerships Act 1907 (c. 24) (“the Act”) as they apply to PFLPs and to partners in PFLPs. A limited partnership may be designated as a PFLP only if it is constituted by an agreement in writing and is a collective investment scheme.

Article 2 amends the Act. The main amendments are as follows—

- paragraph (3) removes the requirement for limited partners to contribute capital to a PFLP;
- paragraph (4) enables limited partners to wind up a PFLP if there is no other partner available to do so, and enables the partners to make an agreement as to winding up of a PFLP;
- paragraph (5) inserts into the Act a list of permitted activities which limited partners in a PFLP may undertake without losing their limited liability status;
- paragraphs (6) to (8) deal with application for and designation of a partnership as a PFLP;
- paragraphs (9) and (10) remove administrative requirements in the case of changes to a PFLP;
- paragraph (11) enables the registrar to strike PFLPs off the register.

Article 3 enables an existing limited partnership to be designated as a PFLP if it makes an application within 12 months of the Order coming into force.

Article 4 amends the Financial Services and Markets Act 2000 (c. 8) such that a PFLP cannot also be a contractual scheme eligible for authorisation under Part 17 of that Act.

Article 5 makes consequential amendments to the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388) (which apply provisions of the Act with modifications).

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.