STATUTORY INSTRUMENTS

# 2017 No. 514

# REGULATORY REFORM PARTNERSHIP

## The Legislative Reform (Private Fund Limited Partnerships) Order 2017

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| *Made - - - -* | *29th March 2017* |
| *Coming into force - -* | *6th April 2017* |

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

For the purposes of section 3(1) of that Act, the Treasury consider that the conditions in 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 affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

In accordance with section 17(2) of that Act, the draft has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

### Citation, commencement and interpretation

**1.**—(1) This Order may be cited as the Legislative Reform (Private Fund Limited Partnerships) Order 2017.

(2) This Order comes into force on 6th April 2017.

(3) In this Order "the Act" means the Limited Partnerships Act 1907(**2**).

### 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—

(**1**) 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".
(**2**) 1907 c. 24.

""Private fund limited partnership" means a limited partnership that is designated under section 8(2) as a private fund limited partnership.".

(3) In section 4 (definition and constitution of limited partnership)(**3**)—

(a) in subsection (2) omit the words from ", who shall at the time" onwards;

(b) after subsection (2) insert—

"(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.";

(c) in subsection (3) for "A limited partner" substitute "Subject to subsection (3A), a limited partner";

(d) after subsection (3) insert—

"(3A) In the case of a limited partner in a private fund limited partnership—

(a) where the limited partnership was registered on or after 6th April 2017, subsection (3) does not apply;

(b) where the limited partnership was registered before 6th April 2017, subsection (3) applies only in relation to the amount of any contribution made by the limited partner when the limited partnership was not a private fund limited partnership.".

(4) In section 6 (modifications of general law in case of limited partnerships)(**4**)—

(a) after subsection (1) insert—

"(1A) Section 6A (private fund limited partnerships: actions by limited partners) makes provision, in respect of limited partners in private fund limited partnerships, supplementing subsection (1).";

(b) in subsection (3), after "limited partnership" insert ", other than a private fund limited partnership,";

(c) after subsection (3) insert—

"(3A) If a private fund limited partnership is dissolved at a time when the partnership has 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.

(3B) If a private fund limited partnership is dissolved at a time when the partnership does not have a general partner, the affairs of the partnership must be wound up by a person who is not a limited partner, appointed 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.

(**3**) 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.

(**4**) Section 6 was amended by Schedule 6 to the Companies (Consolidation) Act 1908 (c. 69).

(3C) Except in the phrase "a person who is not a limited partner" in subsection (3B), references in subsections (3A) and (3B) to partners do not include a partner who is insolvent.

(3D) Subsections (3A) and (3B) have effect subject to any order of the court as to the winding up of the affairs of the partnership.";

(d) in subsection (5), after paragraph (e) insert—

"(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(**5**) (duty of partners to render accounts, etc), or

(ii) section 30 of that Act (duty of partner not to compete with firm).";

(e) after subsection (5) insert—

"(6) Section 36(1) of the Partnership Act 1890 (rights of persons dealing with firm against apparent members of firm) does not apply where a partner in a private fund limited partnership ceases to be a member of the firm.".

(5) After section 6 insert—

"**Private fund limited partnerships: actions by limited partners**

**6A.**—(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 for the purposes of section 6(1) merely because the limited partner takes any action listed in subsection (2).

(2) The actions are—

(a) taking part in a decision about—

(i) the variation of, or waiver of a term of, the partnership agreement or associated documents;

(ii) whether the general nature of the partnership business should change;

(iii) whether a person should become or cease to be a partner;

(iv) whether the partnership should end or the term of the partnership should be extended;

(b) appointing a person to wind up the partnership pursuant to section 6(3B);

(c) enforcing an entitlement under the partnership agreement, provided that the entitlement does not involve a limited partner taking part in the management of the partnership business;

(d) entering into, or acting under, a contract with the other partners in the partnership, provided that the contract does not require, or the action under the contract does not involve, a limited partner taking part in the management of the partnership business;

(e) providing surety or acting as guarantor for the partnership;

(f) approving the accounts of the partnership;

(g) reviewing or approving a valuation of the partnership's assets;

(h) discussing the prospects of the partnership business;

(i) consulting or advising with a general partner or any person appointed to manage or advise the partnership about the affairs of the partnership or about its accounts;

(**5**) 1890 c. 39.

(j) taking part in a decision regarding changes in the persons responsible for the day-to-day management of the partnership;

(k) acting, or authorising a representative to act, as a director, member, employee, officer or agent of, or a shareholder or partner in—

(i) a general partner in the partnership; or

(ii) another person appointed to manage or advise the partnership in relation to the affairs of the partnership,

provided that this does not involve a limited partner taking part in the management of the partnership business or authorising a representative to take any action that would involve taking part in the management of the partnership business if taken by a limited partner;

(l) appointing or nominating a person to represent the limited partner on a committee, authorising such a person to take any action in that capacity that would not involve taking part in the management of the partnership business if taken by the limited partner, or revoking such an appointment or nomination;

(m) taking part in a decision about how the partnership should exercise any right as an investor in another collective investment scheme as defined in section 8D(4) ("master fund"), provided that the partnership's exercise of the right would not cause the partnership to be liable for the debts or obligations of the master fund beyond the amount contributed, or agreed to be contributed, by the partnership to the master fund;

(n) taking part in a decision approving or authorising an action proposed to be taken by a general partner or another person appointed to manage the partnership, including in particular a proposal in relation to—

(i) the disposal of all or part of the partnership business or the acquisition of another business by the partnership;

(ii) the acquisition or disposal of a type of investment or a particular investment by the partnership;

(iii) the exercise of the partnership's rights in respect of an investment;

(iv) the participation by a limited partner in a particular investment by the partnership;

(v) the incurring, extension, variation or discharge of debt by the partnership;

(vi) the creation, extension, variation or discharge of any other obligation owed by the partnership.

(3) The fact that a decision that affects or relates to a private fund limited partnership involves an actual or potential conflict of interest is not of itself a reason to regard a limited partner in the partnership who takes part in the decision as taking part in the management of the partnership business for the purposes of section 6(1).

(4) Nothing in this section—

(a) limits the circumstances in which a limited partner in a private fund limited partnership is not to be regarded as taking part in the management of the partnership business; or

(b) affects the circumstances in which a limited partner in a limited partnership that is not a private fund limited partnership may, or may not, be regarded as taking part in the management of the partnership business.".

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

(a) in the heading after "register" insert "and designate";

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

(c) after that subsection insert—

"(2) The registrar must designate a limited partnership on the register as a private fund limited partnership if an application for such designation is made to the registrar in accordance with section 8D.".

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

(a) in subsection (1)(b), after "(2)" insert "or (3)";

(b) in subsection (2), for "The required" substitute "Except in the case of an application that is accompanied by an application for designation as a private fund limited partnership, the required";

(c) after subsection (2) insert—

"(3) In the case of an application that is accompanied by an application 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.".

(8) In section 8C (certificate of registration)(**8**)—

(a) in the heading, after "registration" insert "and certificate of designation as a private fund limited partnership"; and

(b) after subsection (4) insert—

"(5) If a limited partnership is designated on the register as a private fund limited partnership, the registrar must issue a certificate of designation as a private fund limited partnership.

(6) The certificate must be signed by the registrar or authenticated with the registrar's seal.

(7) The certificate must state—

(a) the firm name and registration number of the limited partnership,

(b) the date of designation as a private fund limited partnership, and

(c) that the limited partnership is designated as a private fund limited partnership under this Act.

(8) A certificate of designation as a private fund limited partnership is conclusive evidence that the limited partnership was designated as a private fund limited partnership on the date of designation.

(9) If a limited partnership is designated as a private fund limited partnership at the same time as it is registered, the registrar may issue a combined certificate instead of issuing separate certificates under subsections (1) and (5), and that combined certificate—

(a) must be signed by the registrar or authenticated with the registrar's seal,

(**6**) Section 8 was substituted by S.I. 2009/1940.
(**7**) Section 8A was inserted by S.I. 2009/1940.
(**8**) Section 8C was inserted by S.I. 2009/1940.