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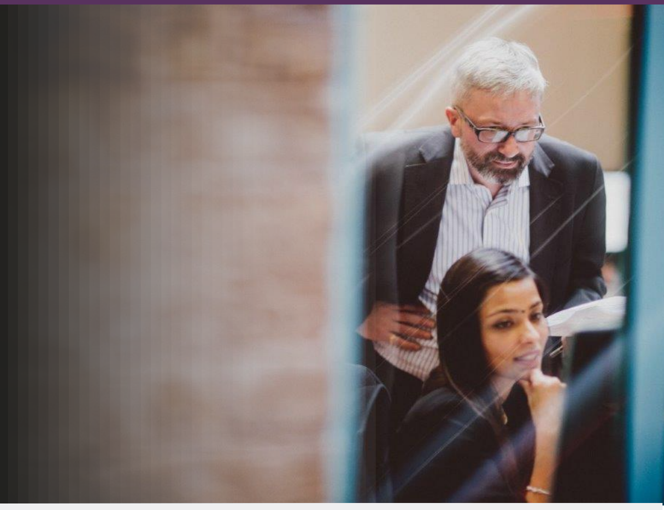
A new class of limited partnership for private funds

September 2017



The Private Fund Limited Partnership (PFLP) is a new sub-category of limited partnership which came into existence earlier this year. It aims to reduce financial and administrative burdens on general partners/managers as well as providing greater legal certainty for limited partners.

The PFLP is likely to be the default choice for private fund managers using the limited partnership structure and introduces a list of permitted actions that limited partners can take without risking their limited liability status.

What is a PFLP?

A limited partnership may be classed as a PFLP if it satisfies, confirms and complies with the "*private fund conditions*", such as being:

- constituted by an agreement in writing; and
- a collective investment scheme (defined under section 235(1) of the Financial Services and Markets Act 2000).

Limited partnerships can become a PFLP at any time. However, once actioned, the process is irreversible and the partnership can never return to its original limited partnership status.

Limitation of liability

PFLP limited partners may undertake actions detailed on the 'white list'. The white list is broad and gives certainty to limited partners that they can carry on their usual activities, for investors in private investment funds, without losing their limited liability status.

The list is by no means exhaustive, and it will be a matter of commercial agreement between the partners as to whether limited partners may carry on 'white list' activities.

Key advantages of PFLPs

Relaxation of capital requirements

PFLP limited partners are not required to contribute capital or property to the partnership, and if they do choose to contribute, they may withdraw such capital or property without being held liable for any debts and obligations to the amount withdrawn.

Simplification of filing requirements

Fewer changes in the partnership need to be notified to the Registrar of Companies. PFLPs are not required to advertise changes in the London, Edinburgh or Belfast Gazette, apart from advertising when a person is no longer general partner.

Removal of some statutory duties

PFLP limited partners do not have to comply with the Partnership Act 1890's duties to render accounts and account for profits from competing businesses as HM Treasury said these duties were not consistent with the role of an investor in an investment fund.

More flexibility in winding up a PFLP

Current legislation requires that a limited partnership must be wound-up by its general partner (unless a court orders otherwise).

Where there is no general partner, a PFLPs limited partners may appoint someone who is not a limited partner to carry out the winding-up of the PFLP.

Where there is a general partner, the partners can agree to someone other than the general partner carrying out the winding-up.

Being struck off the Companies House PFLP register

Further Government consultation is needed in this regard, as there is currently no procedure in place to remove a limited partnership from the Register. The original proposal introduced a procedure so that PFLPs could be struck off the Register. However, the Government has decided to explore and consult on this point later.

Emma de Graauw
020 7299 6928
emma.degraauw@riaabg.com
www.riaabarkergillette.com