



## RESPONSE

*by*

**FACULTY OF ADVOCATES**

*to*

### **CONSULTATION ON REFORM OF LIMITED PARTNERSHIP LAW**

#### **A. Introduction**

As requested, this response has been framed by way of direct response to the questions posed in the consultation paper “Limited Partnerships: Reform of Limited Partnership Law” issued by the Department for Business, Energy and Industrial Strategy dated 30 April 2018.

#### **B. Response to Questions**

**1. Can you provide any additional evidence to help explain the trends in registrations of limited partnerships across the UK in recent years?**

As an independent referral bar, the Faculty has experience of individual court cases involving limited partnerships but is not directly involved in their registration and is not in a position to offer any view regarding overall trends in registrations.

**2. Do you agree that presenters should be required to demonstrate they are registered with an AML supervisory body? Please explain your answer, and provide evidence on its potential benefits.**

The Faculty recognises the important policy objective which this proposal seeks to achieve. It also notes from the data provided in the consultation paper that relatively few applications for registration are submitted directly by proposed partners of the limited partnership and that the anticipated costs of instructing a registered formation agent are relatively modest. Nevertheless, the Faculty considers that it would be desirable to have an exception which allowed direct submission by presenters who intend to be general partners of the limited partnership and where the partnership proposes to conduct its business in the UK jurisdiction in which it is applying to incorporate. It appears unlikely that such an exception

would be used for illicit purposes, since it would require the general partner to provide their details as part of the registration process, thus ensuring transparency.

3. **How should this measure be applied to registrations from overseas?**

The Faculty considers that equivalent measures to those contemplated in question 2 should be required in respect of applications for registration from overseas.

4. **Would it be better to require a limited partnership's principal place of business (PPoB) to remain in the UK [Option A], or alternatively to allow the PPoB to be based anywhere but require a UK based service address [Option B]? Please evidence your answer, including if possible, an assessment of the likely costs of compliance.**

Given the nature of business undertaken by some limited partnerships, including pension funds with global investments, the Faculty considers that there would likely be practical difficulties in determining or evidencing PPoB in some cases. Those difficulties may render Option A unworkable and/or dissuade the legitimate use of UK limited partnerships. The Faculty thus favours Option B. It also notes the Law Commission and Scottish Law Commission's previous recommendation to use the term "registered office" (paragraph 89 of the consultation paper) and considers that this term would be preferable to "service address". The term "registered office" will be more familiar to practitioners and could exist in addition to PPoB if the government wishes to retain that concept. The Faculty is not in a position to provide any information on the likely costs of compliance.

5. **If a new requirement of a UK-based service address were introduced, but existing operation of the PPoB retained, what if any, transparency requirements should be put in place relevant to the PPoB?**

It is not clear to the Faculty what benefits would be gained from having additional transparency requirements in relation to the PPoB in these circumstances – as opposed to transparency regarding the details of the individual partners (see below) – or how, in practical terms, the location of PPoB would be determined or evidenced. Reference is made to the comments in response to question 4.

6. **Should all limited partnerships be required to file an annual confirmation statement?**

This appears to be a logical proposal which is consistent with the aims of the overall reforms which are proposed in the consultation paper.

7. **If you are in favour of an annual confirmation statement, what information should be included and who should file it? Please consider whether that should be for the whole partnership or the difference in requirements for general partners against limited partners – including corporate partners.**

The Faculty considers that the annual confirmation statement should include the information suggested in paragraph 103 of the consultation paper and that it should be capable of being filed by any of the partners, whether general or limited, or their duly authorised agents. It would be beneficial to require the provision of addresses for all partners (i.e. addresses to which correspondence can be sent and at which court proceedings can be served).

8. **Is there a case for limited partnerships to have to prepare accounts and reports in line with the requirements for private companies, as is already the case for qualifying partnerships?**

*The Law of Partnership in Scotland* by J.B. Miller (2<sup>nd</sup> edition) states (at p.607):

“...the abolition of the exempt private company [by Companies Act 1967, s.2] renders it necessary to resort to the limited partnership, if it is desired to withhold from the public the accounts and balance sheet of the concern. There may well be circumstances where either of both of these circumstances [the other being limited partnerships not being liable for corporation tax] exercise a cogent influence upon the decision which is taken. One particular example is the use of the limited partnership as an investment vehicle which, for tax reasons, has become increasingly common in the last ten years. It is thought, however, that in most situations the marked advantages of the private limited company as to the liability of the members will still prove the compelling consideration and that the private limited company will continue to be the favoured form of association for most businesses.”

The Faculty considers that a case could no doubt be made on policy grounds for requiring limited partnerships to produce accounts and reports in line with the requirements for private companies. However, if that proposal was to gain favour then it would remove one of the main reasons for businesses electing to form a limited partnership in the first place. In practice this may well result in very few limited partnerships being formed in the future, given the obvious advantage as regards liability of members which comes with a limited company.

9. **Do you agree with the proposal to give the Registrar a power to strike off partnerships from the register of companies?**

The Faculty agrees that this is a logical proposal.

10. **Are there any other factors or criteria that the Registrar could consider in order to conclude that the partnership is not carrying on a business or in operation?**

The Faculty considers that the Registrar should be given the power to strike off a partnership if it reasonably appears to the Registrar that the partnership is no longer carrying on a business or in operation. A power framed in those general terms would provide flexibility to consider any additional factors or criteria if/when they arise in any individual case.

11. **What operational and legislative procedures could be put in place to mitigate concerns of strike off done in error?**

The Faculty considers that modelling the strike off and restoration provisions on those which apply to limited companies should provide sufficient comfort in this regard.

**20<sup>th</sup> July 2018**