HM Treasury
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London
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By email: lp.consultation@hmtreasury.gsi.gov.uk

5 October 2015

Dear Sirs,

Re: BVCA response to HM Treasury's proposal on using a Legislative Reform Order to change partnership legislation for private equity investments

The British Private Equity and Venture Capital Association ("BVCA") is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 500 firms, the BVCA represents the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers. Our members have invested over £30 billion in nearly 3,900 UK-based companies over the last five years. Companies backed by private equity and venture capital in the UK employ around 490,000 people and almost 90% of UK investments in 2014 were directed at small and medium-sized businesses.

We strongly support the proposed reforms and believe that they will ensure the continued commercial viability of English and Scottish limited partnerships as private fund vehicles and, thereby, will improve the competitiveness of the UK as a jurisdiction of choice for private fund sponsors.

It is extremely welcome news that the Government remains committed to exploring the possibility of allowing English limited partnerships to elect for separate legal personality, even if that is beyond the scope of the current consultation. The possibility of electing to have separate legal personality is important to the UK private funds industry because, without separate legal personality, a limited partnership is not able to contract, own property or otherwise act in its own name. This raises a number of practical issues, such as, most significantly, who will own the property acquired by the limited partnership. Some practices have evolved to deal with this but ultimately they introduce additional and unnecessary administrative complexity (and cost), meaning that some private fund sponsors may, in certain circumstances, be discouraged from using an English limited partnership as a private fund structure (for example, in the case of a fund of funds or a secondary fund that will invest in other private funds).We think that it would be helpful, as an interim solution to one aspect of this problem, if the legislative reform order could be amended to provide a clarification that an English limited partnership may be registered as a limited partner in another English limited partnership, notwithstanding its lack of legal personality. We do not see any policy objection to such a change, given that the English limited partnership is itself registered at Companies House. This would, to some extent, ease the burdens associated with the inability to opt for legal personality. It would enhance usability of English

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limited partnerships and, while not obviating the need to allow English limited partnerships to opt for legal personality, would at least provide an interim solution to one aspect of the current limitations.

We have responded below to the questions asked in the consultation.

1. What are your views on the proposed process for designating private fund limited partnerships?

We agree that it is necessary to introduce a process so as to be able to identify from the register which limited partnerships are private fund limited partnerships.

We agree that a process should be adopted whereby existing limited partnerships may be designated as private fund limited partnerships.

Subject to the comments outlined below, we agree with the proposed process.

Our comments are as follows:

- The draft Legislative Reform (Limited Partnerships) Order 2015 (the "draft LRO") includes a requirement, in articles 2(6)(b) and 3(3)(b), respectively, that a request for designation as a private fund limited partnership include or be accompanied by a certificate signed by a solicitor to the effect that the limited partnership (*i*) meets the private fund conditions and (*ii*) in the case of an existing limited partnership seeking to take advantage of the designation process set out in article 3 of the draft LRO only, is not an authorised contractual scheme.

  We consider that this requirement is unnecessary and will impose significant additional administrative burden and consequential cost on private fund sponsors. Private fund sponsors would be required to engage a solicitor who is willing to give this certificate when they may not otherwise have engaged such a solicitor, and the cost may be significant depending on the facts. We are concerned that if the requirement to obtain a solicitor's certificate is implemented, the burdens associated with such requirement may override the attractiveness of the new private fund limited partnership regime.

  In addition, there is no guidance on what form the certificate must take. It is possible that a solicitor may not be willing to give a certificate without including express assumptions and reservations to address matters of fact and law that lie outside the solicitor's knowledge (much as a solicitor would when issuing a legal opinion in connection with, for example, the admission of a third-party investor to a private fund). However, there is no assurance that Companies House would accept a certificate that includes any such assumptions or reservations. The scope of the application of the changes proposed in the draft LRO would be severely restricted if private fund sponsors are not able to obtain a certificate in a form that Companies House would accept.

  Our strong preference is that the required confirmation(s) should be given by the general partner(s) of a limited partnership requesting designation as a private fund limited partnership (for example, by way of a tick box confirmation in the Form LP5 or, for existing limited partnerships, the Form LP6). This confirmation would form part of the

information that otherwise is provided by the general partner in the Form LP5 or Form LP6. A general partner should be able to make the required confirmation(s) and to the extent that it is uncertain whether it can, it can choose to consult with a solicitor.

We believe that this solution gives Companies House a clear procedure to follow and does not impose any risk or burden on Companies House. The draft LRO makes it clear that, as is normal, Companies House must issue a certificate of registration if the required information is provided on the form, and (as with other information provided on the form) there is no obligation on them to check whether the information is legally correct

- One of the private fund conditions is that the limited partnership must be a collective investment scheme or would be but for the fact that each of the limited partners is a body corporate in the same group as the general partner.

  We understand that the proposed reforms are intended only to benefit private funds formed as English or Scottish limited partnerships. However, a determination as to whether a limited partnership is a "collective investment scheme", ignoring the group exemption but considering all other exemptions, will not necessarily be straightforward. The complexity inherent in this definition, and the legal uncertainties to which it can lead, are well-known.

  Accordingly, in order to make the entry requirement clear and easy to understand and to determine, we recommend amending this private fund condition to require that the limited partnership is, or will be, a collective investment scheme within the meaning of section 235(1) **[**to (4)**]** of the Financial Services and Markets Act 2000, disregarding any exemptions.

- We note that a limited partnership that is registered after the draft LRO is enacted must request to be designated as a private fund limited partnership on registration, and an existing limited partnership (i.e. one which pre-dates the LRO) must request to be designated as a private fund limited partnership "within the 12 months beginning with the day on which this Order comes into force".

  We recommend that a limited partnership (whether or not existing at the time the draft LRO is enacted) should be able to apply to be designated as a private fund limited partnership at any time prior to its dissolution so long as it satisfies the private fund conditions at the time of its designation as such. We agree that, once opted in, a private fund limited partnership should not be able to opt out of the private fund limited partnership regime (so it is a "once and for all time" election).

  It may not always be possible on registration of a private fund as an English or Scottish limited partnership to structure the private fund as a collective investment scheme. We see no justifiable reason why a private fund that is not a collective investment scheme on registration should be precluded from subsequently being designated as a private fund limited partnership if at any time following registration it satisfies the private fund conditions, or (even if it could have been designated at the outset) its partners subsequently decide that they wish to take advantage of the new regime. In the case of an existing limited partnership, we do not understand why a deadline is necessary, and

we are concerned that a general partner of a limited partnership could miss such deadline and forever be excluded from the private fund limited partnership regime.

- We recommend that section 8C(4) of the 1907 Act be amended to make clear that the certificate of a private fund limited partnership is conclusive evidence not only that a limited partnership came into existence on the date of registration but also that the limited partnership is a private fund limited partnership. We believe that this is your intention, but we think that the drafting could be clearer in this regard.

2. What are your views on the measures to allow the registrar to remove from the register entries for inactive private fund limited partnership?

As a general matter, we welcome the proposed measures to allow the registrar to remove from the register inactive private fund limited partnerships as a means to keeping the private fund limited partnership register up-to-date and so as to make it easier to locate an active private fund limited partnership on the register.

We do, however, have the following significant concerns with the proposal as drafted:

- (Section 14C(1)) Where a private fund limited partnership that has not been dissolved is struck off in accordance with section 14A or 14B, it will continue in existence as a general partnership. As a result, the limited partners would become liable for the debts and obligations of the partnership without limitation. That is a real concern. A limited partner should not be at risk of losing its limited liability because a private fund limited partnership is struck off before it has been dissolved. Instead, we recommend that after a private fund limited partnership that has not been dissolved is struck off, the limited partners should continue to benefit from limited liability. We believe that this could be achieved by a clear statement in the LRO that striking off does not have any impact on the respective rights and liabilities (if any) of the partners either before or after striking off.

  We do not think the issue with the current drafting of section 14C(1) would be solved by a private fund limited partnership that is struck off before it is dissolved becoming a (non-private fund) limited partnership as that would not necessarily guarantee the limited liability of the limited partners. For example, if none of the limited partners had made a capital contribution on its admission to the private fund limited partnership because there is no requirement under the 1907 Act for a limited partner in a private fund limited partnership to make a capital contribution, would the limited partners have limited liability when they automatically become limited partners in a (non-private fund) limited partnership?

  We also do not believe that requiring positive consent from all limited partners is a viable solution, because in many (probably most) cases it will not be possible to obtain this if the limited partners are aware of the potential consequences of a private fund limited partnership being struck off, severely restricting the availability of the striking off procedure.

  The procedure contemplated in section 14D, which gives the court power to put the parties back in their original positions, while helpful, does not give investors the certainty

that they likely will require, since it relies upon the discretion of the court and is not an absolute right.

If it is not possible to reach a solution in respect of the position following striking off of a private fund limited partnership that has not been dissolved, we believe that sections 14A to 14D should not be enacted.

We also note that sections 14A to 14D apply only to private fund limited partnerships, which means that the ability to "clean up" the register (such that it is up-to-date), allow re-use of names and provide for greater ease of access to, and review of, the register are all limited to private fund limited partnerships. If a solution can be found to the fundamental issue raised above, it may be appropriate to apply the same procedure to all limited partnerships (both private fund and non-private fund).

- (Section 14A) An application pursuant to section 14A must (*i*) list the "relevant persons" and (*ii*) state that it is made with the consent of any relevant person who is not an applicant. The "relevant persons" are defined as any person who is a partner at the time of the application or, if the partnership has been dissolved, any person who was a partner before the dissolution.

  This is a potentially burdensome requirement if the agreement constituting the limited partnership does not include the express consent of the limited partners to the filing of the application pursuant to section 14A as it may not be possible to obtain the consent of all of the partners at the end of the life of the limited partnership. We recommend that the general partner or a person that is authorised by the private fund limited partnership to make such application should be able to make an application without having to obtain the express consent of all partners to the filing of the section 14A application. The person making the application could be required to certify (for example, by way of a tick box confirmation in the application) that the private fund limited partnership has been dissolved and wound up in accordance with the terms of the limited partnership agreement. Any such procedure would need to be subject to the safeguards in relation to limited liability which are referred to above.

- (Section 14D) Where a private fund limited partnership has been struck off the register incorrectly, the partnership must be registered again as a limited partnership before it or any of its partners may apply to the court for an order under section 14D.

  We recommend that this condition should be deleted. To satisfy this condition would require all partners to co-operate so as to register the limited partnership again after the limited partnership has been struck off, as a Form LP5 must be signed by all intended general partners and limited partners in the proposed limited partnership. In the case of a private fund with many different partners (some of whom may not be responsive to efforts to contact them), that is not a practical solution.

- We recommend that the registrar be given a more general power to correct the register on application by a private fund limited partnership, where either the information originally supplied is incorrect or the transcription of that information to the register is incorrect as this would simplify matters for persons inspecting the register. Currently,

where a Form LP6 with incorrect information is filed, a corrective Form LP6 may be filed but the original Form LP6 with the incorrect information will remain on the register.

3. Is there uncertainty around what actions constitute "taking part in the management of the partnership business"?

As the law stands today, there is considerable uncertainty around what actions constitute "taking part in the management of the partnership business". There is very limited guidance given in the Limited Partnerships Act 1907 (the "1907 Act") and in judicial dicta. This is far from satisfactory, particularly given that the consequence for a limited partner of it "taking part in the management of the partnership business" is loss of its limited liability under the 1907 Act. From a limited partner's perspective, it is extremely important that its liability with respect to a private fund is limited, so far as possible, to the amount of its contractual commitment to the private fund.

The position in the UK may be contrasted with the position in most of the other jurisdictions in which private funds are typically formed (for example, the Cayman Islands, the State of Delaware, Jersey, Guernsey and Luxembourg) where there is clear guidance on what activities a limited partner may carry on without jeopardising its limited liability.

While limited partners in private funds generally are passive, typically they do have limited protection rights (for example, the right to approve investments that would otherwise breach the private fund's investment restrictions and, particularly in separate accounts and pledge funds, the right to approve or veto particular investments). Given the uncertainty around the meaning of "taking part in the management of the partnership business", it is not always clear what activities a limited partner in a private fund formed as an English or Scottish limited partnership may carry on without jeopardising its limited liability under the 1907 Act. As a result, there are occasions where it is not appropriate to structure a particular private fund as an English or Scottish limited partnership when there are viable alternative structures in other jurisdictions.

4. Does the proposed list in the draft order cover the type of activities a limited partner is likely to undertake in monitoring and assessing the performance of a private fund? Are there any activities that should not be on the list?

We welcome very much the inclusion of a white list of activities that a limited partner may carry on without jeopardising its limited liability under the 1907 Act given the current uncertainty around the meaning of "taking part in the management of the partnership business" and the importance to limited partners in private funds of their limited liability status (see our response to Q3 above); and we agree with the activities on the list.

We do not express a view on the commercial issue of what governance, review and oversight rights a limited partner in a private fund should have vis-à-vis the general partner or manager of the private fund. Those rights vary from private fund to private fund. They are negotiated by the private fund sponsor and the limited partners and recorded in what usually amounts to a detailed limited partnership agreement. The introduction of a white list would not change that. The white list does not prescribe what rights the limited partners in a private fund formed as an English or Scottish limited partnership will have. Instead, it will enable the private fund sponsor and the limited partners to give effect to their commercial agreement on what governance, review and

oversight rights the limited partners have with the added certainty that the limited partners may undertake activities that fall within the categories of activities set out in the white list without jeopardising their limited liability under the 1907 Act.

In many cases, the activities on the white list confirm the current understanding of participants in the UK private fund industry of what activities a limited partner may undertake without being deemed to be "taking part in the management of the partnership business". In addition, the white list concept is familiar to private fund sponsors and limited partners given that most other jurisdictions in which private funds are typically formed have a white list that covers the matters addressed in the white list.

We have three substantive comments on the white list:

- We recommend that a statement be included to the effect that there is no presumption that the performance of any activity not set out in the white list constitutes "taking part in the management of the partnership business" so as to ensure that the white list is not considered to be exhaustive.

- We also recommend that the explanatory note to the draft LRO expressly clarify that (*i*) the inclusion of a white list for limited partners in private fund limited partnerships does not create any adverse presumptions for limited partners in (non-private fund) limited partnerships and (*ii*) if an activity on the white list was undertaken by a limited partner prior to the enactment of section 6A or is undertaken by a limited partner of a (non-private fund) limited partnership after enactment of section 6A, such activity is not deemed or considered to be an activity that constitutes "taking part in the management of the partnership business" simply because it is an activity on the white list (*i.e.*, the consequence of the white list is not a declaration that undertaking an activity on the white list in circumstances where the white list has not application would constitute "taking part in the management of the partnership business"). The recommended clarification is important both for (non-private fund) limited partnerships registered in the future and also for existing limited partnerships whether or not they apply to be designated as private fund limited partnerships.

- We recommend that the white list be expanded to cover the situation where a limited partner in a private fund limited partnership takes part in a decision about how such private fund limited partnership will exercise its rights in respect of another fund vehicle (whatever form the other fund vehicle takes and wherever the other fund vehicle is located) in which the private fund limited partnership has invested. Private fund sponsors commonly establish feeder funds to invest in their private funds for tax, regulatory or operational reasons. The limited partners in a feeder fund generally will wish to be able to direct how the feeder fund exercises its rights in respect of the private fund it is invested in so that they are in no worse a position than they would be in had they invested in such private fund directly. Our recommended change would address any concerns that there may be that a limited partner in a feeder fund formed as an English or Scottish limited partnership would, in that situation, be "taking part in the management of the partnership business" of the feeder fund.

We also have the following drafting comments:

- (Section 6A(2)(h)) Replace "(unless those rights are to carry out management functions)" with "(unless the enforcement of those rights otherwise would constitute or be regarded as taking part in the management of the partnership business)" because it is not clear what "management functions" means.

- (Section 6A(2)(k)) Insert "and being engaged under" after "entering into" to make it clear that the performance of any activities under a contract with a limited partnership or general partner are covered, and replace "(unless the contract requires the limited partner to take part in management functions)" with "(unless the contract requires the limited partner to take part in the management of the partnership business)" because it is not clear what "management functions" means.

- (Section 6A(2)(p)) Insert "and the taking of any actions or decisions by a person appointed or nominated by a limited partner to represent the limited partner on a committee that would not constitute taking part in the management of partnership business if undertaken directly by the limited partner" after "or nomination" to make it clear that the actions and decisions of a person nominated or appointed to represent a limited partner on a committee will not jeopardise such limited partner's limited liability under the 1907 Act.

- (Section 6A(2)(s)) Insert ", or another person appointed to manage the partnership," after "the general partner" because in a typical private fund structure, a separate manager is appointed to take all actions and decisions.

In addition, we have had a chance to review the response co-ordinated by Linklaters LLP on behalf of a number of law firms. We agree with the drafting comments proposed in paragraph 4.2 of that response to the extent not addressed above.

5. Is any purpose served by the requirement that a limited partner make a capital contribution, no matter how nominal?

No, we do not believe that the requirement that a limited partner make a capital contribution serves any purpose. The capital contributions of limited partners in private funds formed as English or Scottish limited partnerships typically are nominal amounts, with the remainder of the limited partners' contractual commitments funded by way of interest-free advances. As a result a third-party creditor will not take any comfort from the limited partners' capital contributions that a private fund is able to service its debts. A third-party creditor is interested in the assets and liabilities of the private fund, including the contractual commitments (and not just the capital contributions) of the limited partners. In any event, a private fund generally does not have many significant third-party creditors as most of its business is transacted through its subsidiaries, rather than directly by the private fund.

Further, the requirement that a limited partner make a capital contribution is administratively burdensome. The capital contribution must be made "at the time of entering into" the limited partnership. If a limited partner breaches this requirement it will jeopardise its limited liability under the 1907 Act. In the private fund context, each limited partner (and there can be as many as

fifty or more investors investing at any one closing) has to wire the amount of its capital contribution to the private fund sponsor (often when it does not have to wire any other amounts at that time as the first substantial drawdown may not coincide with the closing at which the limited partner is admitted to the private fund), ensuring that the money arrives on or before the day the limited partner is admitted to the private fund, despite often working across different time zones and with final agreement as to the terms and timing of the investment being reached immediately before the admission of the investor as a limited partner in the private fund. Frequently, a private fund sponsor will, consequently, adopt administratively complex procedures to ensure investors (or other person(s) on the investors' behalves) are able to make the capital contributions when required.
We agree with the proposed amendments set out in article 2(3) of the draft LRO.

6. Should a limited partner be allowed to withdraw their capital during the life of the partnership? If so, should they remain liable for the amount withdrawn?

A limited partner should be allowed to withdraw its capital during the life of the limited partnership without remaining liable for the amount withdrawn.

A private fund typically will distribute amounts to investors through the life of the private fund (not just on winding up). In order to ensure that an investor in a private fund formed as an English or Scottish limited partnership would not be liable under the 1907 Act to return amounts distributed to it during the life of the private fund if the private fund were to end up at any time with insufficient assets to meet its debts and obligations, investors' contractual commitments are structured so that the majority of the contractual commitments is funded by way of interest-free advances and only a nominal amount is contributed as capital. As noted by HM Treasury, this is an unnecessary complication that can be difficult for an international investor to understand given the peculiar characterisation of the interest-free advances and given that an international investor is accustomed to investing in non-UK private fund structures where the full amount of its contractual commitment is contributed as capital without any equivalent restrictions on its return

We note that some private fund sponsors may wish to continue to follow the traditional approach of splitting limited partners' contractual commitments between nominal capital contributions and interest-free advances. We consider that the draft LRO adequately accommodates this approach as there is no prohibition on limited partners making capital contributions, and where a limited partner does make a capital contribution, it will be able to withdraw its capital contribution during the life of the limited partnership without any impact on its limited liability under the 1907 Act.

We agree with the proposed amendments set out in article 2(3) of the draft LRO.

7. If limited partners are allowed to withdraw their capital, should any other conditions be put in place?

No, we do not consider it appropriate or necessary to put any other conditions in place.

8. Should the limited partners in a private fund be allowed to agree among themselves who should wind up the partnership without having to obtain a court order?

Yes.

As a general matter, we consider that the requirement to seek a court order is overly burdensome and costly. The partners in a limited partnership should be able to agree who will wind up the limited partnership, just as they can agree who will manage the limited partnership prior to its dissolution.

It is common for limited partners in a private fund formed as an English or Scottish limited partnership to have the right to remove the general partner and dissolve the limited partnership in certain circumstances. Where limited partners exercise that right, currently they have no option but to apply to the court for an order that the affairs of the limited partnership be wound up under the supervision of the court.

Given the foregoing and the reality that a limited partner will not *per se* be prejudiced by a person other than the general partner winding up the limited partnership, it seems appropriate to allow partners to agree among themselves who should wind up the limited partnership without having to obtain a court order.

Subject to our one drafting comment set out below, we agree with the proposed amendments set out in article 2(4)(c) of the draft LRO. We recommend replacing "on their behalf" with "on behalf of the partnership" in sections 8C(3A) and (3B) to take account of the fact that any person appointed to wind up a limited partnership will be appointed on behalf of the limited partnership.

9. Should the requirement to register the amount of capital be removed for private funds?

We agree that the requirement to register the amount of capital should be removed for private funds. The amount of the limited partners' capital contributions is not pertinent to any person (see our response to Q5 above); and for so long as that information is included on the register, the general partner must update the register if there is any change to that information, which is an unnecessary administrative burden.

We disagree with the retention of the requirement to register the names of the limited partners. This can be unacceptable to limited partners that are sensitive to disclosure of their private investments. We are fully supportive of the Government's initiatives to promote transparency, and in particular the Register of Persons with Significant Control over UK companies, which we believe is very helpful in establishing the identity of individuals with rights to control or significantly influence corporate actions. However, limited partners are not in that position, with no rights to be involved in management and (if these proposals are implemented) no requirement to contribute capital or to register the amount of any capital contributed. We therefore do not see any rationale for, or benefit in, a requirement to register their names. They may be private investors, whose private investments generally are (unless there is other investor-specific regulation which stipulates otherwise) a private matter. To require them to disclose their names is similar to asking a wealth manager to reveal the names of its private clients, and some limited partners may prefer to use an alternative structure if that remains a requirement of the private fund limited partnership.

10. Should the requirement to register the general nature of the limited partnership's business and the term of the limited partnership be removed for private funds?

Yes, the requirement to register the general nature of the limited partnership's business and the term of the limited partnership serves no purpose – that information has no bearing on the status of a private fund limited partnership and the descriptions typically included are insufficiently detailed to be relied upon without seeking additional information from the limited partnership. Further, for so long as that information is included on the register, the general partner must update the register if there is any change to that information, which is an unnecessary administrative burden.

11. What are your views on the requirement to advertise a notice in the Gazette? Does it present any specific problems? Is it appropriate to remove the requirement for private funds?

Aside from the burden of the requirement to advertise a notice in the Gazette, section 10 of the 1907 Act is unhelpful because it provides that until a notice of a relevant arrangement (*i.e.*, a general partner becoming a limited partner or the assignment of a limited partnership interest) is advertised in the Gazette the arrangement "shall, for the purposes of [the 1907 Act], be deemed to be of no effect". There is some debate over what that means, although it seems likely that as regards third parties the arrangement will have no effect until a notice is advertised in the Gazette. From the perspective of a private fund investor, this leads to an odd result.

However, rather than remove section 10 of the 1907 Act for private fund limited partnerships, we recommend that it be amended to require that a notice be advertised in the Gazette after a general partner becomes a limited partner (but not after a limited partner assigns its interest). The problematic wording identified in the paragraph above (*i.e.*, "shall, for the purposes of [the 1907 Act], be deemed to be of no effect") should be deleted, so that a failure to advertise a notice does not have the negative consequence it currently does. In addition, wording equivalent to that in section 36(2) of the Partnership Act 1890 (the "1890 Act") to the effect that the advertisement of a notice in the Gazette will be notice of the change as to persons that had no dealings with the private fund limited partnership before the change should be inserted.

We note that section 36 of the 1890 Act requires that a notice be advertised in the Gazette following a change in a partnership's constitution, and a person dealing with the partnership may, absent actual notice of the change, treat "all apparent members of the old [partnership] as still being members of the [partnership]" until the notice is advertised. If the requirements under the 1907 Act to advertise a notice in the Gazette are being disapplied for private fund limited partnerships, we suggest that the requirement under section 36 the 1890 Act should also be disapplied for private fund limited partnerships.

12. Should the duties to render accounts and information, and to account for profits made in competing businesses, be removed for limited partners in private funds?

Yes. In the private fund context, investors may (and often do) invest in private funds that compete with one another. Accordingly, the duty to account for profits made in competing

businesses is incompatible with the investment activities of a typical private fund investor. In addition, given that a limited partner will not play an active role in the management of a limited partnership (otherwise it will likely jeopardise its limited liability status under the 1907 Act), it is not clear why a limited partner should be subject to the duties to render accounts and information and to account for profits made in competing businesses. If the partners in a private fund limited partnership wish to impose any duties on one another of the sort set out in sections 28 and 30 of the 1890 Act, they may do so in the limited partnership agreement.

We agree with the proposed amendments set out in article 2(4)(d) of the draft LRO.

However, we recommend that limited partners in a private fund limited partnership also should be exempt from section 29 of the 1890 Act. Section 29 requires a partner in a partnership to account to such partnership for any benefit derived by him from "any transaction concerning the partnership, or from any use by him of the partnership property name or business connexion". The same reasoning applies in respect of section 29 as in respect of sections 28 and 30; there is no reason to distinguish between them.

We note that if sections 28 to 30 of the 1890 Act are removed for limited partners in private fund limited partnerships (which we think is the right position), the partners in a private fund limited partnership nevertheless may agree that some or all of the duties set out in those sections should apply to the limited partners in such private fund limited partnership. In that case, the application of those duties would derive from the detailed limited partnership agreement that is negotiated between such partners.

13. Do you have any comment on the interaction of the legislation for authorised fund limited partnerships and the proposed legislation for private fund limited partnerships?

We do not have any comments.

Please feel free to contact Gurpreet Manku at the BVCA if you have any queries on this response.

Yours faithfully

Simon Witney
Chairman, BVCA Legal & Technical Committee