



REFORM OF LIMITED PARTNERSHIP LAW

Issued 23 July 2018

ICAEW welcomes the opportunity to comment on the *Reform of Limited Partnership Law* published by BEIS on 30 April 2018, a copy of which is available from this [link](#).

We agree that the identity of persons establishing limited partnerships should be checked and verified. Trust or Company Service Providers (TCSPs) are required to do these checks as part of their client due diligence, so requiring a TCSP to be used to establish a limited partnership is one way of achieving this. Another option would be for Companies House to carry out client due diligence itself. The same considerations apply in this respect to formation of limited liability companies and it is unclear why government is not adopting a consistent approach. The fact that there are many times more limited liability companies than limited partnerships is not in itself sufficient reason to apply a less rigorous regime to limited liability companies.

This ICAEW response of 23 July 2018 reflects consultation with the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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MAJOR POINTS

1. We agree that client due diligence should be carried out on those establishing limited partnerships. The consultation proposes that limited partnerships should, in effect, only be established through TCSPs, which is one possibility. Another is that Companies House carry out the checks itself. As noted in our response to the recent Treasury Select Committee Enquiry on Economic Crime (available from this [link](#)) we believe that there could be advantages in having Companies House carry out due diligence checks for limited liability companies (see in particular paragraph 8 of the response) and the same principles would apply in relation to limited partnerships.
2. The consultation paper suggests that the costs (estimated at £40-£100) of using a TCSP might deter legitimate enterprise and so should not apply to limited liability companies as they are so popular. It is difficult to reconcile this with Government's view that enterprise benefits from the reputation of the UK as a clean and trusted place to do business. Also, if Companies House were to conduct client due diligence, Government could demonstrate its support for trusted enterprise by not passing on the full costs of the checks.
3. At the same time as suggesting that TCSPs should always be used, the paper implies that TCSPs are not as effective as they should be and that regulatory initiatives are needed to address this. We believe that this is an over-simplification and suggest that there are wider concerns about the UK's anti-money laundering efforts that could usefully be addressed (as noted in our response to the Enquiry referred to above).

DETAILED QUESTIONS [CONSIDER NOT LISTING / ANSWERING THEM ALL]

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

4. We do not have further evidence, but the explanations already provided are diverse.

Question 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 impacts.

5. We agree that those wishing to establish limited partnerships should be subject to client due diligence checks. See Main Points above for further comments on this issue.
6. It would be helpful to know what kind of evidence will be required to demonstrate that a presenter is registered with an AML supervisory body. For instance, many limited partnerships are set up by lawyers or professional accountants so, in those cases, would it suffice for the lawyer or accountant involved to specify which AML supervisory body they belong to (eg, SRA, ICAEW)?

Question 3: How should this measure be applied to registrations from overseas?

7. It will be essential that registrations from overseas are addressed as some of these are likely to represent the highest money laundering risk. We suggest that, unless Companies House is going to carry out client due diligence, overseas registrations should be required to be submitted by a UK agent within the regime.

Question 4: Would it be better to require a limited partnership's principal place of business (PPoB) to remain in the UK, or alternatively to allow the PPoB to be based anywhere but

require a UK based service address? Please evidence your answer, including if possible, an assessment of the likely costs of compliance.

8. We do not believe that limited partnerships should be required to keep their PPOB in the UK. It is unclear how this would particularly help transparency. It may also make the form of business less attractive, for instance, to international private equity funds (which may have UK involvement, for instance, through investors, even if the principal place of business is elsewhere).
9. UK limited companies are not required to have their principal place of business in the UK so if Government is to adopt this approach for limited partnerships it should explain why such a move is necessary in one case but not the other.
10. We therefore favour option B. We do not see that requiring a limited partnership to have a service address in the UK should be problematic. It is, however, unclear exactly what the purpose of the requirement would be. For instance, is it intended simply to make it easier to serve legal process against the partnership and would it, in fact, do so? Would limited partnerships be able to use the address of their representatives in the UK (for instance, legal advisors or professional secretaries) for the purpose? Or is the intention that the address should be an operational office with people in the UK? The former is consistent with the position for limited liability companies, but would mean that one address could be used for numerous limited partnerships. The latter would be at odds with the requirements for limited companies and it is unclear why a different approach would be justified.

Question 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?

11. We believe that an annual confirmation statement should suffice.

Question 6: Should all limited partnerships be required to file an annual confirmation statement?

12. Yes.

Question 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.

13. We believe that it would be sufficient for the confirmation statement to be limited to information already required by law to be disclosed (ie, as summarised in paragraph 103 of the consultation paper). If more extensive disclosure requirements are envisaged, we suggest that Government should explain what it is seeking to achieve and how the proposals relate to the underlying concerns identified in the consultation paper.

Question 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?

14. In the absence of filing requirements, it is unclear why Government would wish to require limited partnerships to prepare accounts (or undergo audit), this being a matter that could be left to those involved to govern in the partnership agreement as is presently the case.

15. As regards filing requirements, the general partner of an ordinary limited partnership has unlimited liability. The rationale for filing requirements applicable to limited liability companies (and 'qualifying partnerships') does not therefore apply in this case. We believe that government needs to be clearer on what its objectives are in this respect and that it should have evidence that any new requirements would meet these objectives. If filing requirements are introduced, they would need to be proportionate and exceptions might be needed, for instance in relation to investment vehicles with negligible trading revenues or creditors.
16. If, as is suggested in the consultation paper, businesses are starting to choose overseas vehicles in preference to UK limited partnerships, comparison with their requirements may be useful along with analysis of whether or not changes in the UK regime might accelerate that trend and whether not that would be helpful in the fight against crime.

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

17. We share concerns noted in the consultation paper that striking off may result in an unregistered partnership, with unlimited liability for all partners. Unless that is an intended and proportionate outcome, then we believe that Government should err on the side of caution in providing for striking off, for instance due to administrative failings. If the main concern is that the register is cluttered with limited partnerships that are apparently no longer active, an alternative approach might be to re-organise the register to address this point, but without altering legal status of limited partnerships concerned.

Question 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?

18. No specific comments on this question.

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

19. No specific comments on this question.