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Limited partnerships: limited reforms?

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***J.B.L. 435 Introduction**

In many ways, a limited partnership ("LP") is similar to a general partnership ("GP"). Both are tax transparent, as a partnership itself is not taxed, and the only tax liability arises on the income and capital gains of partners according to their own tax regimes,¹ and both are flexible since the law imposes few requirements on the terms of the agreement between partners. All partners enjoy a considerable degree of privacy and although LPs, unlike GPs, must be registered,² accounts need not be filed and the details which must be registered are minimal, especially when compared with the filing requirements for limited companies.³ The key distinction between LPs and GPs, apart from registration, is that while all partners in a GP are general partners with unlimited liability, LPs consist of at least one general and one limited partner, the latter's liability being limited to his initial contribution of capital or property⁴ provided he does not take in part in management.⁵

Although LPs are much less significant numerically than GPs, being numbered in the thousands rather than the hundreds of thousands,⁶ they occupy a significant niche in the market for those who require the privacy, flexibility and tax transparency of the partnership structure together with a degree of limited ***J.B.L. 436** liability. They may be used to carry on any trade, occupation or profession,⁷ but are predominantly used as investment vehicles.⁸ Since the Inland Revenue confirmed that an LP used as a venture capital investment fund would be treated as an LP for tax purposes,⁹ they have become the most popular vehicle for investment in private equity in the United Kingdom,¹⁰ typically having as general partner a private equity firm which manages the fund on behalf of the limited partner investors. They are less highly regulated than authorised unit trusts or investment trusts,¹¹ and are often used for property investment because investors which are wholly or partially tax exempt can invest jointly with tax paying bodies such as property companies without losing their exempt status.¹²

The purpose of this article is to critically analyse the law governing LPs and consider whether reforms are needed, in the form proposed by the Law Commission in its recent paper *Limited Partnerships Act 1907: A Joint Consultation Paper*¹³ ("the LP Consultation Paper") or otherwise, to ensure its continued success. Although reforms will be discussed in the context of the Limited Partnerships Act 1907 ("the 1907 Act") and the Partnership Act 1890 ("the 1890 Act") (which is relevant to LPs in so far as it is not amended or disapplied by the 1907 Act), it is likely that new legislation resulting from the LP Consultation Paper and the *Joint Consultation Paper on Partnership Law*¹⁴ ("the GP Consultation Paper") which it supplements will take the form of a single statute on partnership law governing both LPs and GPs. This would be particularly advantageous to LPs as reference would no longer have to be made to two separate sets of provisions.

Reforms to the formation of an LP

As a preliminary point, it is submitted that the Law Commission's proposal that the LP be renamed "mixed partnership" or "investment partnership" in order to avoid confusion with the LLP should be

rejected. The former is meaningless and the latter implies, misleadingly, that limited partnerships are only for investment purposes.¹⁵

***J.B.L. 437 Nature of partners**

Section 4 of the 1907 Act requires that partners be “persons”. Companies, LLPs or individuals may therefore be partners, but partnerships may not (unless and until they are given separate legal personality as proposed in the GP Consultation Paper¹⁶). However, by stating that a corporate body may be a limited partner, s.4(4) might be taken to imply (erroneously) that such a body may not be a general partner. In fact, it is common practice in investment LPs for the general partner to be a corporate body and therefore, in the interests of clarification, s.4 should provide that any legal or natural person may be a general or limited partner. The Law Commission proposes only that it be made clear that a body corporate may be either a general or a limited partner.¹⁷

Partners may not simultaneously be both general and limited partners, since s.3 of the 1907 Act defines as a general partner any partner who is not a limited partner. The Law Commission has invited comments on this.¹⁸ It is submitted that the prohibition should not be lifted since this could cause confusion for third parties, and indeed partners themselves, as to when partners who were both general and limited partners would have unlimited liability.¹⁹

A partner may change his status, but although the 1907 Act provides that this must be registered²⁰ and, in the case of a change from general to limited, advertised in the *Gazette*,²¹ it does not specify whether the change must be approved by all the partners or just the general partners. It is submitted that since s.6(5)(d) of the 1907 Act makes the introduction of a new partner subject only to the consent of the general partners, a change in status must also require only their consent. However, this should be set out expressly. The Law Commission makes no proposals for this.

Limit on number of partners

The 20 partner limit²² was subject to a number of exceptions²³ for LPs and GPs, and, as the Law Commission proposed,²⁴ has been abolished by the Regulatory Reform (Removal of 20 Member Limit) Order 2002.²⁵ This is now a less important reform for LPs than it might have been, because LPs which take the form of collective investments (see further below) were eligible for exemption ***J.B.L. 438** from the limit,²⁶ and thus such LPs could have an unlimited number of investors without having to establish parallel partnerships or use other collective investment vehicles to operate as limited partners.

Business

The partnership business may, according to s.45 of the 1890 Act, consist of “every trade, occupation or profession”. In *Smith v Anderson*²⁷ the Court of Appeal held that the management of a trust fund in which the investors invested “once for all” did not constitute a business. It commented, however, that had there been a commercial activity involving investment “for the purpose of obtaining gain from a repetition of investments”, this would have constituted a business.²⁸ Although the Law Commission has argued that the term business clearly includes investment activities,²⁹ the importance of investment business to LPs makes it imperative to remove any doubt by including investments in the definition.

Capital contribution

Section 4(2) of the 1907 Act provides that an LP must have at least one limited partner, and that limited partners must have contributed capital or property at the outset. It is thus implicit that a purported limited partner who has failed so to contribute is not a limited partner, and that if there are no other limited partners, the partnership cannot be an LP. However, these consequences should be set out expressly in the Act. The Law Commission makes no such proposals.

Registration

Section 5 of the 1907 Act provides that an LP must be registered, and “in default thereof” it is deemed to be a GP. While this clearly applies to a purported LP which has not registered at all, it is less clear whether it also applies to an LP whose registered details are inaccurate or incomplete. It is submitted that where there is at least one general partner and one limited partner who has contributed the

capital or property stated in the register, and registration has taken place, the partnership will be an LP. While registration is a precondition for the existence of an LP, and therefore an unregistered partnership cannot be an LP, this argument does not apply to an improperly registered partnership, and it would impose a disproportionate penalty on the limited partners. In addition, it is implicit in s.9 of the 1907 Act, which provides that failure to register changes renders the general partners liable to fines, that there is no other penalty. However, the Law **J.B.L. 439* Commission assumes that an improperly registered LP must be deemed to be a GP, presumably on the ground that it is not "registered ... in accordance with the Act" as required by s.5,³⁰ although it proposes that should cease to be the case.³¹ Given this uncertainty, the Act should specify that neither errors in initial registration nor failure to register changes prevent the entity from constituting an LP.

The Law Commission has also proposed³² that a certificate of registration be conclusive evidence of proper registration, as is the case for companies,³³ in order to protect limited partners. However, this would only protect limited partners against loss of limited liability caused by errors in initial registration, not by failure to register changes, and therefore the provision proposed above is to be preferred.

Since third parties could be prejudiced by reliance on an inaccurate register, a provision similar to s.42 of the Companies Act 1985 should also be inserted into the 1907 Act, stating that an LP may not rely, as against other persons, on changes affecting the registered details if those changes have not been registered. In addition, the amount of fines levied on general partners for default in filing information should be increased to the level set for companies.³⁴ The present sum (£1) is derisory and does not represent a deterrent. The Law Commission makes no proposals as to third parties, but does propose that the level of fines be increased in this way.³⁵

The details required for registration are the LP name, the general nature of the business, the principal place of business, the full names of the partners, the date of commencement, the term (or if none, the conditions on which it exists), a statement that the partnership is limited and the description of every limited partner as such, and the amount and nature of the capital contributed by each limited partner.³⁶ These are the minimum to identify the LP on the register and protect third parties, and only limited amendments are required. First, the requirement that the name be registered³⁷ should be accompanied by an express prohibition on the use of the same name (a prohibition which already applies to companies³⁸), since at present the Registrar will only "advise against" the use of any such name.³⁹ For the avoidance of doubt, the Act should also state that the name may not be one the use of which would constitute a criminal offence or be offensive.⁴⁰ Second, the principal place of business should be replaced by the **J.B.L. 440* registered office, to enable the location of the substantive business to be changed without alteration to the register. Third, in the interests of clarity, this section should also refer to the obligation under the Partnerships and Unlimited Companies (Accounts) Regulations 1993⁴¹ to file annual accounts, an annual report and an auditors' report if all general partners are limited companies, or unlimited companies or Scottish firms all of whose members are limited companies.

The Law Commission proposes only the second of these, but also queries whether the nature of the business and details of limited partners should continue to be stated.⁴² It is submitted that since the former is relevant to whether business is "of the kind carried on by the firm", and thus to whether a partner engaging in such business has apparent authority under s.5 of the 1890 Act, while the latter is relevant if a limited partner becomes liable as a general partner at any time, both should continue to be registered.

Clarification is also required of the relationship between registration and s.14 of the 1890 Act, which imposes liability on those who hold themselves out, or are held out, as partners. The Act should state that third parties may rely as against the LP on the holding out as a partner of a person who has not been registered as such, although an LP may not rely on this as against the third party. Similarly, the Act should state that a third party (but not another partner) may treat a limited partner who is held out to be a general partner as such, even though that partner is registered as a limited partner. Section 10 of the 1907 Act, which provides that notice of the conversion of a general partner to a limited partner is effective only when advertised in the *Gazette*, should therefore be repealed as proposed by the Law Commission.⁴³

Reforms to the running of an LP

The agreement

The requirement of registration means that LPs are much less likely than GPs to lack a partnership agreement, since the partners know that they are creating a partnership and will have had to reach agreement, at very least as to the details to be registered. The introduction of a model agreement would reduce this likelihood still further, but the Law Commission concluded in its GP Consultation Paper⁴⁴ that a model agreement was unnecessary and did not even refer to the possibility in the LP Consultation Paper. This is particularly surprising given that the government is proposing to provide a simpler and clearer model document for companies.⁴⁵

***J.B.L. 441 Application of the Business Names Act 1985 (“BNA”)**

Although the BNA requires the names of all partners to be disclosed on documents and at the LP's premises, there is no requirement that particular partners be identified as limited or general partners, or that the partnership itself be identified as an LP. As a result, third parties who have not consulted the register may be unaware that the assets of some partners are not available to the creditors, and therefore disclosure of the fact that the partnership is an LP, and the status of its partners, should be compulsory.

Disclosure of partner status would also render obsolete the requirement in s.10 to advertise changes from general to limited status in the *Gazette*. Disclosure of the registered number should also be compulsory, in order to alert third parties to the fact of registration and the availability of registered details. The registered number is particularly important if registration in the same name as other LPs continues to be permitted. The Law Commission proposes only disclosure of LP status, through compulsory use of the suffix “limited partnership”, “lp” or “limited firm”.⁴⁶ It is submitted that either of the first two, but not the third, would achieve this objective. The Law Commissions also propose to provide expressly that mere disclosure of a limited partner's details pursuant to the BNA does not constitute holding out as a general partner.⁴⁷ However, this could prejudice third parties and is unnecessary since an LP can easily state the limited partner's status.

Decision making and management

The 1890 and 1907 Acts provide, in default of contrary agreement, that decisions as to “ordinary matters” and the introduction of a new partner must be taken by the general partners (by majority and unanimity respectively),⁴⁸ while decisions to change the partnership agreement or the nature of the business must be taken by all the partners unanimously.⁴⁹ However, there is no provision for the taking of other extraordinary decisions, and therefore the 1907 Act should be amended to provide that such decisions (for example, the dissolution of a fixed term partnership before expiry of the term) should be taken unanimously by the general partners. The Law Commission makes no such proposal.

Section 6(1) of the 1907 Act provides that a limited partner has no right to manage, and loss of limited liability is automatic if he takes part in management. The Law Commission's proposal that third party knowledge of this should continue to be irrelevant is to be welcomed,⁵⁰ since it is non-involvement in management rather than successfully concealing such involvement from third parties which is the justification for limited liability. By way of exception to s.6(1), s.6(5) expressly permits limited partners to inspect the books of the LP, examine the state and prospects of the business and advise other partners on these matters. As the Law Commission suggests, further guidance as to what else limited partners may do without losing their limited liability should be given,⁵¹ although it is not possible to provide an exhaustive list. For example, although s.6(1) is already apt to cover advising on or overseeing investment decisions, the importance of such activities to many LPs makes their inclusion in s.6(5) desirable.⁵² However, permissible activities should not include the exercise of any power over the conduct of the business, and therefore should not include voting, except as already mandated by the 1890 or 1907 Acts.

Duration of partners' liability

Section 17 of the 1890 Act provides that a partner who leaves retains liability for partnership debts and obligations incurred while he was a partner. He may avoid this liability if the continuing partners and relevant third parties agree to a novation, or the continuing partners agree to indemnify him, although novation only affects contractual liability, and the value of an indemnity depends on the finances of the indemnifying partners at the time of any claim. The Law Commission consults on whether a time-limit should be imposed on the postretirement liability of limited partners,⁵³ but since there is no inherent unfairness in continuing liability for limited partners, there is no justification for

introducing a time-limit. If one were imposed it should be much longer than suggested by the Law Commission (between six months and three years); a 10 year period would seem the minimum to allow claims to materialise.

Extent of liability

At present, a limited partner remains liable to the extent of his original capital investment even if he has withdrawn some of that capital.⁵⁴ This is disproportionate to the aim of ensuring that such partners provide money or property for the use of the LP, rather than merely a guarantee to contribute in the future⁵⁵ and, in any event, it can be avoided by a limited partner making only a small capital contribution and the rest of his investment by way of loan. It is also inconsistent with the rules on capital maintenance applicable to private limited companies,⁵⁶ since if a company purchases shares from a shareholder the shareholder ceases to be liable in respect of those shares, and it submitted that so long as the withdrawal is disclosed on the register and a statutory declaration of solvency is made, there ***J.B.L. 443** is no reason to insist that a limited partner remains liable for the amount of his original contribution. For the avoidance of doubt, the 1907 Act should expressly permit alteration of the capital contribution with a corresponding alteration of liability, subject to unanimous agreement of the general partners, a statutory declaration of solvency and registration of the alteration. The Law Commission makes no such proposals.

Sharing of profits and losses

Section 24(1) of the 1890 Act provides that, in the absence of contrary agreement, income profits and losses are to be shared equally. Although this will not be appropriate for all LPs, and agreements of investment LPs typically provide for the general partner to be paid annual management fees of 1 to 3 per cent of the value of the fund, plus a share of the increased value of the fund once the value has increased by a specified minimum amount,⁵⁷ it is as good a default position as any. However, the word "income" should be deleted, since the Court of Appeal has held that s.24(1) applies also to capital profits.⁵⁸ The Law Commission consulted on this in the GP Consultation Paper.⁵⁹

As to the sharing of losses, it is submitted that requiring a limited partner to do this would be contrary to the principle of limited liability, and that therefore there is no such obligation. However, since limited liability protects only personal capital, it should not be extended to protect profits received from the LP, and therefore a limited partner's share of any losses should be offset against future or undrawn profits. The Law Commission proposes that this be set out expressly in the 1907 Act.⁶⁰

Application of the Sex Discrimination Act 1975 and the Race Relations Act 1976

The prohibition of discrimination on grounds of sex or race which apply to partners and potential partners does not apply to limited partners.⁶¹ These exemptions are unnecessary and unjustifiable and should be abolished. However, the Law Commission makes no such proposals.

****J.B.L. 444 Transfer of a partner's share***

Shares in an LP are not publicly tradable and, as a result, they have no readily ascertainable market price and may be difficult to dispose of.⁶² Although this is also true of GPs, LLPs and private companies, and therefore the competitive disadvantage is minimal, it remains a problem for departing partners. It also prevents LPs benefiting from the exemption of single property schemes from the prohibition in s.238 of the Financial Services and Markets Act 2000 ("FSMA") on authorised persons promoting collective investment schemes (see further below), since shares in the scheme must be dealt in on a recognised investment exchange.⁶³

Taxation

LPs are taxed largely in the same way as GPs.⁶⁴ Thus each partner is liable to income tax on his share of the profits,⁶⁵ and to capital gains tax on his fractional share of any gain realised through the sale of a partnership asset. A change in profit sharing ratios among partners (whether caused by a change in the partners or otherwise) does not give rise to a chargeable gain or allowable loss unless the assets have been revalued.⁶⁶ It should be noted that participation in an investment LP may result in foreign investors being treated as having an establishment in the United Kingdom, and thus render them liable to taxation here.⁶⁷

However, there are a number of differences between the taxation of LPs and that of GPs. First, unlike

a general partner, a limited partner's right to set off losses from the partnership trade against income other than from that trade is restricted to the amount of his capital contribution and undrawn profit.⁶⁸ This must surely be the correct approach, since a limited partner would not be liable for losses which exceeded this amount.

Second, a limited partner may not claim tax relief on the interest on a loan used to purchase a partnership share or increase his capital contribution.⁶⁹ It might be assumed that the encouragement of investment in small businesses would justify granting tax relief not only to general partners and company shareholders, but **J.B.L. 445* also to limited partners. However, the denial of tax relief to limited partners is consistent with that to members of an LLP.⁷⁰

Third, an LP consisting of property held on trust in order to allow the partners to share in the profits arising from its acquisition, management or disposal⁷¹ does not constitute a unit trust but a limited partnership scheme. This means that neither the regulatory restrictions applicable to authorised unit trusts,⁷² nor the disadvantageous tax provisions applicable to unauthorised unit trusts, apply.⁷³

Fourth, where an insurance company is an LP in a venture capital investment LP, Sch.7AD TCGA provides that s.59 TCGA, under which partners are individually liable to tax on the disposal of partnership assets, does not apply. Instead, the insurance company's interest in the LP is treated as a single asset and therefore the calculation of chargeable gains is simplified.

Financial services

The FSMA has a considerable impact on many LPs because s.19 FSMA provides that regulated activities (including dealing in investments, arranging such deals on behalf of others, and managing assets on behalf of others⁷⁴) may only be carried on by authorised persons. There are a number of exceptions; for example, r.3 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001⁷⁵ exempts from the s.19 prohibition certain investments in private equity by pension fund trustees. However, in the absence of an exemption, an investment LP or its general partner requires authorisation⁷⁶ from the Financial Services Authority,⁷⁷ which must be satisfied that the applicant carries on business in the United Kingdom, has adequate financial resources and is a "fit and proper" person to carry out regulated activities. An LP's authorisation will not be affected by a change in membership or dissolution, so long as the members and the business remain substantially the same.⁷⁸

In addition, s.238 FSMA provides that even authorised persons may not promote collective investment schemes to the general public unless an exemption applies. While an LP may simply be a joint venture (for example a property developer and a financial institution forming an LP to develop a site), many will constitute a collective investment scheme (defined as any arrangement by which participants receive profits or income arising from the acquisition, holding or disposal of property without being involved in its day to day management, and in **J.B.L. 446* which their contributions and the profits are pooled, or the property is managed as a whole by or on behalf of the operator of the scheme⁷⁹). The exemptions set out in s.238 are unlikely to apply because an LP cannot constitute authorised open ended investment company (OIEC), or operate a single property scheme (see above), and relatively few will be able to form a recognised overseas scheme, or an authorised unit trust.

Reforms to the termination of an LP

Dissolution

All LPs will have some agreement as to the events or procedure which will trigger dissolution, since s.8(e) of the 1907 Act requires "the term, if any" of the LP to be registered and Form LP5, on which an LP is registered, requires that if the term is not fixed the "conditions of existence of the partnership" must be stated. Subject to contrary agreement, any general partner may dissolve the LP on notice,⁸⁰ although a limited partner may not,⁸¹ and the death or bankruptcy of any general partner will dissolve the LP.⁸² The provision in s.6(2) of the 1907 Act that an LP does not dissolve on the death or bankruptcy of a limited partner is not, however, made subject to contrary agreement. It is submitted that this is a legislative oversight and that contrary agreement would indeed enable the partnership to dissolve in these circumstances as the Law Commission suggests,⁸³ but this should be made clear in the Act.

Section 33(2) of the 1890 Act provides that if the share of a general (but not a limited) partner is charged for a private debt, the partnership may be dissolved at “the option of the other partners”. This appears to require all other partners to agree to such a dissolution, but since the position is unclear, and the financial position of limited partners is protected by their status, the 1907 Act should state expressly that the agreement only of other general partners is required. The Law Commission argues⁸⁴ that this option is exercisable by all partners unanimously, and proposes that this be set out expressly in the Act.

Dissolution may also be ordered by the court on the application of one of more partners. Section 35 of the 1890 Act provides that the court may dissolve a partnership on grounds of a partner's permanent incapacity, prejudicial conduct⁸⁵ or persistent or wilful breach of the partnership agreement, that the business can *J.B.L. 447 only be carried on at a loss, or that it is just and equitable. Section 96 of the Mental Health Act 1983 as modified by s.6(2) of the 1907 Act provides that dissolution may also be sought on the grounds of a general partner's mental incapacity, or a limited partner's mental incapacity if his share cannot otherwise be realised. Although the Law Commission consults on whether further grounds for dissolution are required for LPs,⁸⁶ it is submitted that they are not. However, the 1907 Act should be amended to provide for the expulsion of a partner by the court on the same grounds as dissolution, to enable the court to adopt a less drastic solution to an LP's difficulties where appropriate. It should also be amended to replace the reference to the “lunacy” of a limited partner in s.6(2) of the 1907 Act with a more appropriate term.

Insolvency

The Insolvent Partnerships Order 1994 (“the IPO”) applies to partnerships which the courts in England and Wales have jurisdiction to wind up.⁸⁷ It provides that the “members” may apply for a voluntary arrangement,⁸⁸ administration⁸⁹ or the winding up of the LP,⁹⁰ and does not distinguish between limited and general partners for this purpose. This is inconsistent with limited partners' inability to dissolve the partnership, but reflects the fact that they are subject to similar sanctions to general partners under the IPO. The IPO also fails to specify what proportion of “members” must act and, although case law indicates that an application may be made by a single partner,⁹¹ the IPO should be amended to make this clear. The terms of reference of the Law Commission did not include insolvency and it has therefore made no proposals in this area.

There are a number of differences between the application of insolvency procedures to LPs and GPs. First, a joint bankruptcy petition may be presented by the partners in a GP, but not an LP.⁹² Second, although limited partners are *J.B.L. 448 deemed to be officers of the LP,⁹³ and thus potentially liable to disqualification under the Company Directors Disqualification Act 1986, and for fraudulent trading under s.213 of the Insolvency Act 1986, in practice they are much less likely to be made liable than general partners. This is because they are less likely to have engaged in conduct which would indicate their unfitness to manage a company, or to have been knowingly a party to the carrying on of business with intent to defraud.

Third, the offence of wrongful trading under s.214 of the Insolvency Act 1985 may be inapplicable to limited partners. This offence applies only to directors, a term which is not defined in the IPO, and it can be argued that the position of limited partners (unlike that of general partners) is not analogous to that of directors. The IPO should, however, include a definition of the term “director” in the context of partnerships.

Fourth, the assets of limited partners are not available to creditors unless, of course, that partner has engaged in management. However, Sch.1 to the CPR re-enacting RSC Ord.81 refers to the possibility of enforcing a judgment in the firm name against the partners and does not distinguish between general and limited partners.⁹⁴ Since this might mislead and thereby prejudice third parties by implying that they can enforce a judgment against the private assets of a limited partner, the CPR should be amended to make it clear that this is not possible.

Conclusion

The reforms necessary to LP law are relatively modest, and it is not suggested that their adoption would increase significantly the use of LPs, although the proposed introduction of separate legal personality and the lifting of the partner limit is likely to make all partnerships more attractive as business entities. However, clarification of matters such as the meaning of “business”, the consequences of inaccurate registration, the relationship between registration and s.14 of the 1890

Act, what constitutes “management” and the position as to the setting off of losses; and changes such as permitting reduction of limited partners' liability as well as their current capital contribution will certainly make LPs easier to use, although it is submitted that the introduction of a model partnership agreement would facilitate this still further. It is to be hoped that the new legislation will combine the concision of the 1890 and 1907 Acts with increased clarity and comprehensiveness. It would be unfortunate if improvements to the substantive law were marred by adoption of the obscure style and excessive reliance on secondary legislation of the Limited Liability Partnerships Act 2000.

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1. s.111 of the Income and Corporation Taxes Act 1988 (“ICTA”) and s.59 of the Taxation of Chargeable Gains Tax 1992 (“TCGA”).
2. s.5 of the 1907 Act.
3. See also Department of Trade and Industry *Modernising Company Law* (2002) July Cmnd. 5553.
4. s.4(2) of the 1907 Act.
5. s.6(1) of the 1907 Act. This may be contrasted with the protection afforded to members of a limited liability partnership (LLP), who all have limited liability but who may retain personal liability for their own wrongdoing (s.6(4) of the Limited Liability Partnership Act 2000). See further V. Finch and J. Freedman, “The Limited Liability Partnership: Pick and Mix or Mix-Up?” (2002) J.B.L. 475 and E. Deards, “Partnerships and the Problem of Unlimited Liability” (2000) C.L.L.Rev. 73 on the uncertainty surrounding the extent of this liability.
6. See further FAME [online] (sl): Bureau van Dijk Electronic Publishing and *Joint Consultation Paper on Partnership Law* Law Commission Paper No. 159; Scottish Law Commission Discussion Paper No. 11, at p.2 n.4. citing Department of Trade and Industry, *Small and Medium Enterprise (SME) Statistics for the UK 1998* (1999) August at Table 23.
7. s.45 of the 1890 Act.
8. See, e.g. D.M. Rose, “Theatrical investment in the United Kingdom: A Producer’s Nightmare” (1996) 7(4) Ent. L.R. 137.
9. British Venture Capital Association/Inland Revenue Statement, May 26, 1987.
10. See “Finance Special” (2001) 9 Jun E.G. 65 and P. Mitchell, “Limited Partnerships” (1996) May *Compliance Monitor* 112. See also Alt Assets Research, “The Limited Partner Perspective: A Survey of European Institutional Investors” (2002) May.
11. See further J. Watson, “Private Equity Limited Partnerships” (1998) 1 *The Corporate Law Tax Review* 371.
12. See further C.R. Vaughan and P.J. Purton, “Joint Ventures--a Future for the LP” (1982) 4 J.P.L. 225, P. Soares, “Using a Limited Partnership for Property Transactions” (1997) 18 P.L.B. 7, J. Martin and G. Chase, “Joint Venture Agreements” (1999) 39 P.L.J. 10 and K. Hutcheson and A. Howard, “Laying Strong Foundations” (1999) 1(10) *Legal Week* 37.
13. Law Commission Consultation Paper No. 161 / Scottish Law Commission Discussion Paper No. 118.
14. *Op. cit.* n.6.
15. *Op. cit.* n.13 at 1.14. In Ireland, investment LPs are a different entity to LPs.
16. At 4.17.
17. LP Consultation Paper, *op. cit.* n.13, at 3.3.
18. LP Consultation Paper, *op. cit.* n.13, at 3.7.
19. See, e.g. *Haughton Graphic Ltd v Zivot and Herbert Marshall*, unreported, Supreme Court of Ontario, noted in the *Journal of International Banking Law* (1986) 1(3) N97.

- [20.](#) s.9 of the 1907 Act.
- [21.](#) s.10 of the 1907 Act.
- [22.](#) s.717 of the Companies Act 1985.
- [23.](#) See s.717 of the Companies Act 1985 and related statutory instruments.
- [24.](#) See Department of Trade and Industry, *Removing the 20 Partner Limit--Summary of Responses* November 2001. See also the GP Consultation Paper at 5.61 and P. Myrers, "Institutional Investment in the United Kingdom: A Review" March 6, 2001, at 12.104.
- [25.](#) S.I. 2002/3203 in force December 21, 2002.
- [26.](#) Limited Partnerships (Unrestricted Size) No. 4 Regulations (SI 2002/376).
- [27.](#) (1880) 15 Ch. D 247.
- [28.](#) per Brett L.J., at p.279. See also C-80/95 *Harnas v Helm CV v Staatssecretaris Van Financiën* [1997] E.C.R. I-745 in which the Court of Justice ruled that a Dutch LP which held investments and received dividends and interest did not carry out an economic activity for the purposes of charging value added tax.
- [29.](#) GP Consultation Paper, *op. cit.* n.6, at 5.10.
- [30.](#) *Lindley and Banks on Partnership* (17th ed., Sweet and Maxwell, 1995) Ed R. l'Anson Banks, at pp.29-27. See also *Rayner and Co v Rhodes* [1926] 24 Ll.L.Rep. 25, per Wright J., at p.28.
- [31.](#) LP Consultation Paper, *op. cit.* n.13, at 3.48 *et seq.*
- [32.](#) LP Consultation Paper, *op. cit.* n.13, at 3.26.
- [33.](#) s.13(7) of the Companies Act 1985.
- [34.](#) £1000 plus £100 per day (s.352(5) and Sch.4 of the Companies Act 1985).
- [35.](#) LP Consultation Paper, *op. cit.* n.13, at 3.47-3.48.
- [36.](#) s.8 of the 1907 Act.
- [37.](#) s.9 of the 1907 Act.
- [38.](#) s.26(1)(a) of the Companies Act 1985.
- [39.](#) Companies House Guidance on Limited Partnership Registration, at part 8.
- [40.](#) See, e.g. s.26(1)(d) and (e) of the Companies Act 1985.
- [41.](#) SI 1993/1820.
- [42.](#) LP Consultation Paper, *op. cit.* n.13, at 3.22 and 3.17.
- [43.](#) LP Consultation Paper, *op. cit.* n.13, at 3.30.
- [44.](#) At 6.7.
- [45.](#)

Department of Trade and Industry, *Modernising Company Law*, *op. cit.* n.3, at p.8.

46. LP Consultation Paper, *op. cit.* n.13, at 1.14.
47. LP Consultation Paper, *op. cit.* n.13, at 3.39.
48. s.6(5)(a) of the 1907 Act and s.24 (7) of the 1890 Act as modified by s.6(5)(d) of the 1907 Act.
49. ss.19 and 24(8) of the 1890 Act.
50. LP Consultation Paper, *op. cit.* n.13, at 4.19.
51. LP Consultation Paper, *op. cit.* n.13, at 4.16.
52. See further P. Myners. *op. cit.* n.24, at 12.104.
53. LP Consultation Paper, *op. cit.* n.13, at 4.49.
54. s.4(3) of the 1907 Act.
55. See further *Rayner and Co v Rhodes*, *op. cit.* n.29.
56. s.162 *et seq* of the Companies Act 1985 provide exceptions to the general prohibition in s.143 on a private company purchasing its own share capital.
57. Myners Review, *op. cit.* n.24, at 12.14.
58. *Popat v Shonchhatra* [1997] 3 All E.R. 800.
59. *Op. cit.* n.6, at 12.18 *et seq.*
60. LP Consultation Paper, *op. cit.* n.13, at 5.19.
61. s.11(5) of the Sex Discrimination Act 1975 and s.10(1) and (4) of the Race Relations Act 1976. The prohibition on race discrimination is also inapplicable to any partnership with five or less partners, although the equivalent exemption in the SDA was amended by s.2(2) SDA 1986 after the ruling on Case 61/81 *Commission v United Kingdom* [1982] E.C.R. 2601. It was originally envisaged as applying only to professional partnerships with more than eight partners (Home Office *Equality for Women*, Cmnd. 5724 (September 1974, HMSO: London) at para 53. A similar rationale applies to the Race Relations Act (Home Office *Racial Discrimination* Cmnd. 6234 (September 1975, HMSO: London) at paras 48 and 50).
62. See further "Limits to Trading" (2001) E.G.
63. s.238-9 FSMA
64. See further A. Levene and C. Treacy, "Collective Property Investment--is a Limited Partnership What You Want?" (1999) T.J. 7.
65. A limited partner's share of profits will not be taken into account when calculating his pensionable earnings under s.644 ICTA because this only applies, *inter alia*, to income earned by "a partner personally acting in the partnership" and, by definition, a limited partners does not so act.
66. Inland Revenue Statement of Practice D12 *Capital Gains Tax: Partnerships* (January 17, 1975) as extended by SP1/89.
67. See further A. McWhirter, "Investment Limited Partnerships" (1991) T.J. 17.
68. ss.117 and 118 ICTA reversing the effect of *Reed v Young* [1986] 1 W.L.R. 649. The restriction does not apply where the business of the LP is a profession.

69. s.362 ICTA.
70. s.362 ICTA.
71. s.237 FSMA.
72. See further ss.242-261 FSMA.
73. The Capital Gains Tax (Definition of Unit Trust Schemes) Regulations 1988 (SI 1988/266) and the Income Tax (Definition of Unit Trust Schemes) Regulations 1988 (SI 1988/267) disapply the rules applicable to unauthorised unit trusts under s.469 ICTA and s.99 TCGA.
74. Sch.2 FSMA.
75. SI 2001/1177.
76. s.40 FSMA.
77. s.40 FSMA.
78. s.32 FSMA.
79. s.235 FSMA. Art.3 and the Sch. to the Financial Services and Management Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) provides that certain arrangements will not constitute collective investments. For example, if all partners carry on business other than investment business and the scheme is for commercial purposes related to that business, it will not constitute a collective investment scheme.
80. s.32 of the 1890 Act.
81. s.6(5)(e) of the 1907 Act.
82. s.33(1) of the 1890 Act.
83. LP Consultation Paper, *op. cit.* n.13, at 5.32. See also Lindley and Banks on Partnership, *op. cit.* n.29, at 32-02.
84. GP Consultation Paper, *op. cit.* n.6, at 5.35.
85. See, *e.g.* *Re Hughes & Co* [1911] 1 Ch. 342.
86. LP Consultation Paper, *op. cit.* n.13, at 5.39.
87. Insolvent Partnerships Order 1994 (SI 1994/2421). See further E. Deards, "Partnerships --When the View is No Longer of Profit" (1995) 4(2) Nott.L.J. 165. The IPO does not apply to Scotland, and although a detailed discussion of the position there is outside the scope of this article, it should be noted that Scottish LPs cannot therefore be wound up under the Insolvency Act 1986 as unregistered companies (see, *e.g.* *Smith (Petitioner)* [1999] S.L.T. (Sh Ct) 5).
88. s.1 of the Insolvency Act 1986 as modified by Art.4 and Sch.1 to the IPO. Where the partnership is in administration or liquidation, the petition may be present by the administrator or liquidator.
89. s.9 of the Insolvency Act 1986 as modified by Art.6 and Sch.2 to the IPO. A petition may also be present by the creditors.
90. s.221A of the Insolvency Act 1986 as modified by Art.9 and Sch.5 to the IPO. A petition may also be presented by a creditor, the Secretary of State or, where the partnership or a partners is subject to a voluntary arrangement, administration, liquidation or bankruptcy, by the supervisor, administrator, liquidator or trustee (ss.221 and 221A of the Insolvency Act 1986 as modified by Art.7 and Sch.3 to the IPO).
91. *Re Greek Taverna* [1999] B.C.C. 153.
- 92.

s.264 of the Insolvency Act 1986 as modified by Sch.7, para.2 of the IPO.

93. Art.2 of the IPO. Sch.1, Pt.1, para.6 of the Company Directors Disqualification Act 1986 as modified by Art.16 and Sch.8 to the IPO provides that the matters to be taken into account when determining unfitness include breach of ss.8-10 of the 1907 Act.

94. See also Pt.6 and PD 10 to the CPR.

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