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Death by a thousand cuts or storm in a teacup? The reform of limited partnership law

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***J.B.L. 578** Introduction

In the United Kingdom, limited partnerships are a variation on general partnerships and are governed in part by the same legislation, the Partnership Act 1890 (the Partnership Act), albeit as amended by the Limited Partnerships Act 1907 (the Limited Partnerships Act). The key distinction between limited and general partnerships is that whereas a general partnership is formed entirely of general partners, each with unlimited personal liability for the debts and obligations of the partnership, a limited partnership is formed of at least one general partner and one limited partner, the latter having liability limited to the extent of his capital contribution so long as he does not participate in management. A further distinction is that limited partnerships must be registered at Companies House. In these respects they resemble limited liability partnerships (LLPs), which must be registered and whose members have no personal liability for the debts and obligations of the LLP, except in the event of personal wrongdoing.¹

Limited partnerships have always been overshadowed by limited companies, which have proved a much more popular vehicle for investors seeking the protection of limited liability, although limited partnerships received a new lease of life as investment vehicles in the 1980s,² particularly after HMRC confirmed that this would not result in adverse tax treatment.³

***J.B.L. 579** In response to a request from the DTI in 1997, the Law Commission and the Scottish Law Commission carried out a review of both general and limited partnership law, producing two joint Consultation Documents⁴ and, in 2003, a report containing a draft Partnerships Bill.⁵ After further consultation by the DTI,⁶ the Government announced in 2006 that it would bring forward proposals based on the Law Commissions' recommendations, although only in relation to limited partnerships.⁷ In 2008 BERR published a Consultation Document containing a draft Legislative Reform Order (LRO)⁸ (the original draft LRO) to repeal and replace the Limited Partnerships Act. However, in the light of the responses to this,⁹ BERR announced that although it would proceed with reforms, it would not do so in the form of the original draft LRO but, after further discussions, publish a series of LROs introducing reforms gradually.¹⁰ The first of these is the Legislative Reform (Limited Partnerships) Order 2009 (the LRO).¹¹ It was published in June 2009 together with an Explanatory Document,¹² and came into force on October 1, 2009.

This article will consider the need for reform of limited partnership law and the extent to which the LRO, and any future legislation based on the original draft LRO, would make the necessary reforms or simply create new difficulties.

The need for reform

The Myners Review of institutional investment criticised the Limited Partnerships Act as "a generic and rather archaic piece of legislation".¹³ It is not surprising that a statute which is over a century old needs updating to reflect current business practices. However, from the outset, the Limited Partnerships Act suffered from an inherent lack of clarity, stemming from its genesis as an offshoot of general partnership law. The fact that it cannot be read without reference to the Partnership ***J.B.L. 580** Act contributes to a lack of accessibility and transparency in the law, not least because there are provisions of the Partnership Act which do not readily fit limited partnerships but which have not been amended by the Limited Partnerships Act. Certain provisions which require updating or clarification are discussed below.

It is worth noting that a number of other jurisdictions have reformed their limited partnership legislation in recent years, including Guernsey, Jersey, the Isle of Man and the United States. However, as will be seen, there are significant differences of approach to key issues such as separate legal personality and the role of limited partners.

The reforms introduced by the LRO

The LRO made two amendments to the Limited Partnerships Act, both of which had also been included in the original draft LRO.

Mandatory suffix to the name

Whereas other entities whose owners enjoy a degree of limited liability, such as companies and LLPs, must reveal that fact in their name by use of suffixes such as “Ltd”, “Plc” or “LLP”, this has not hitherto been the case for limited partnerships. However, s.8B of the Limited Partnerships Act, as amended by the LRO, now mandates the use of the suffix “limited partnership” or “LP” (each in upper or lower case, or a combination thereof, or in Welsh if the principal place of business is in Wales). This is welcome as bringing limited partnerships into line with companies and LLPs, and making it more obvious to third parties that the entity is different from a general partnership and that the assets of all partners are not available to creditors. It should be noted that this only applies to limited partnerships registered on or after October 1, 2009.

Relationship between registration and fulfilment of the definition of a partnership

Prior to the LRO, the certificate of registration of a limited partnership was not conclusive evidence of proper registration and thus partners were not protected against subsequent allegations of illegality. In particular, limited partners were at risk of liability as general partners because s.5 of the Limited Partnerships Act provides that every limited partnership must be registered and, in default, is deemed to be a general partnership and any limited partner deemed to be a general partner.¹⁴ However, s.1 of the Partnership Act (which is not modified or disapplied by the Limited Partnerships Act) provides that partnership is “the relation which subsists between persons carrying on a business in common with a view of profit”, and it was therefore unclear whether a partnership which had been properly registered as a limited partnership, but did not fulfil the s.1 definition, was in fact a partnership. This lack of clarity was reinforced by the provisions on registration ***J.B.L. 581** in s.8 (now s.8A) of the Limited Partnerships Act, which requires that the statement of particulars sent to the Registrar be signed by “each partner” who can, of course, only be partners prior to registration if the s.1 definition is fulfilled.

Section 8C of the Limited Partnerships Act, as amended by the LRO, clarifies the relationship between registration and fulfilment of the criteria in s.1 of the Partnership Act by providing that a certificate will be issued on first registration and that this is conclusive evidence that a limited partnership came into existence on that date, in the same way as a certificate of incorporation is for a company¹⁵ or an LLP.¹⁶ The original draft LRO explicitly stated that this was so even if the s1 definition was not fulfilled at that time,¹⁷ and although the LRO does not, the same result is implicit. However, it is submitted that this approach detracts from the s.1 definition and, in order to avoid this while still achieving clarity, it should also be stated that registration is deemed to constitute carrying on business for the purposes of s.1.¹⁸

Other reforms envisaged by BERR

Although the Explanatory Document accompanying the LRO only referred to the future adoption of one of the reforms set out in the original draft LRO (the clarification of permitted activities for limited partners; see below), it is likely that others will be included, and therefore the most significant of these will now be considered.

A single statute for limited partnerships

The original draft LRO proposed to repeal the Limited Partnerships Act, after amending its provisions and inserting them into the Partnership Act (as ss.44A--44EE and a Schedule). In principle it is desirable for limited partnership legislation to be contained in one Act.¹⁹ This approach has been taken, for example, in the Isle of Man.²⁰ Such a consolidation could improve the transparency of the law and make it easier (and so quicker and cheaper) for potential or actual partners, and their advisers, to understand and utilise it. However, the length and complexity of the original draft LRO

militated against the achievement of these benefits, and its lack of concision and, in certain respects, clarity, compared unfavourably with the Limited Partnerships Act. While this is a matter of drafting and not an inevitable consequence of consolidation, the Government's current approach now appears to focus on amendments to the Limited Partnerships Act rather than consolidation into a single statute.

***J.B.L. 582** *The registered details*

Registered name

At present, a limited partnership's choice of registered name is unrestricted, although the Registrar will advise against the registration of a name which is too similar to that of a name already on the register²¹ and the use of a same or similar name may constitute the tort of passing off.²² In contrast, companies and LLPs are subject to a considerable number of restrictions on their registered names and are prohibited from registering in the same name as any other registered entity, including an existing limited partnership.

The original draft LRO proposed to bring limited partnerships into line with companies and LLPs. It prohibited registration in the same name as another registered entity²³ and enabled the Secretary of State to direct a change of name if it was too similar to that of another entity.²⁴ Certain provisions of the Companies Act 2006 on registered names were applied, including those on prohibited names, sensitive words which require the approval of the Secretary of State, and names which are so similar to another name in which another person has goodwill that that person may object.²⁵ This alignment would be a welcome simplification and clarification of the law.

It is true that this could leave existing limited partnerships at risk of their name being registered by another firm, or being prevented from registration because of similarity to that of a company or LLP name,²⁶ and some commentators have proposed a provision equivalent to that for LLPs,²⁷ so that new provisions on names do not affect the continued registration of a firm by a name in which it was previously registered.²⁸

Place of business

Section 8A of the Limited Partnerships Act requires registration of the proposed principal place of business. The original draft LRO proposed replacing this with the registered office,²⁹ allowing greater flexibility since the location of the substantive business could be changed without alteration to the registered office.

***J.B.L. 583** It is unclear whether s.8A requires the place of business to be in the United Kingdom only on registration, or permanently. If permanently, then the proposal in the original draft LRO would not only clarify the law,³⁰ but reduce the burden of maintaining the principal place of business permanently in the United Kingdom, since the registered office could simply be an address for communication. However, it would also permit the principal place of business to be moved abroad without the knowledge of creditors or other third parties, and such a move might result in a change of the applicable insolvency law including the priority of creditors.³¹

Nature of business

Section 8A of the Limited Partnerships Act requires the general nature of the business to be registered. The original draft LRO omitted this requirement but the LRO included it, so it is unclear whether it is to be retained permanently, or only pending a further LRO. It is submitted that this information should continue to be registered. Section 5 of the Partnership Act provides that "the acts of every partner who does an act for carrying on in the usual way business is of the kind carried on by the firm of which he is a member bind the firm", and therefore knowledge of the nature of the business is relevant to a third party's assessment of whether business is indeed of the kind carried on by the firm, and thus to whether a partner engaging in such business has authority under s.5. It also reduces the risk of confusion between the registered details of limited partnerships with similar names.³²

Partners' addresses

At present, there is no requirement to register the addresses of partners. The original draft LRO³³ provided that the addresses of general partners must be registered, but it is submitted that any such requirement must be subject to provisions on confidentiality equivalent to those applicable to

company directors and LLP members.³⁴

Duration

Section 8A of the Limited Partnerships Act provides only that the length of any term for which the partnership is formed must be stated. The original draft LRO omitted this requirement but the LRO included it, so again it is unclear whether it **J.B.L. 584* is to be retained permanently, or only pending a further LRO. It is submitted that where a partnership is set up for a finite term, this is relevant information for third parties and should be included.³⁵

Change of limited partners

Section 9 of the Limited Partnerships Act requires registration within seven days of any change of partners, including existing partners changing status, while s.10 also requires notification in the Gazette of a general partner ceasing to be a general partner or the assignment of a limited partner's share. Default in registration results only in a nominal fine, but those changes required to be notified in the Gazette are not effective until so notified. The original draft LRO omitted the requirement of notification in the Gazette but proposed that a change of limited partner (unless resulting from his death or dissolution) would take effect only on registration, which must take place within 14 days.³⁶ Concerns were raised that this would delay the protection of a new limited partner pending registration,³⁷ but it is submitted that it is not unreasonable for a limited partner to wait for registration before becoming involved in the partnership, and that he should not enjoy the privilege of limited liability until third parties are put on notice of his status.

The registration procedure

Section 8 of the Limited Partnerships Act requires all partners to sign the statement of registration. The original draft LRO required only the signature of the general partners³⁸ but the LRO did not include this amendment, so it is unclear whether it has been rejected or may be contained in a future LRO. It would be more administratively convenient, and although it would remove the opportunity for limited partners to check the registration details, this has been balanced by making the registration certificate conclusive so that limited partners can be assured of their status despite any defects in registration.

It has been argued that the signing of the registration statement by a general partner could constitute "establishing" or "operating" a collective investment scheme for the purposes of the Financial Services and Markets Act 2000, which would require him to be an authorised person under that Act, and that since many such partnerships are managed by an authorised entity, the signature of such a person should be an alternative to that of a general partner.³⁹ However, it is **J.B.L. 585* submitted that this would be a fundamental and disproportionate amendment to the rules on registration and would be out of line with the provisions on first registration of companies⁴⁰ and LLPs.⁴¹

Section 9 of the Limited Partnerships Act provides that changes must be signed by "the firm". The original draft LRO provided that notice of change of limited partner must be signed by a general partner or other person with authority to give the notice on behalf of the partnership, although a limited partner becoming a general partner could himself sign the relevant notice.⁴² This would allow registration of a change in status of a limited partner to a general partner to be effected without the knowledge or consent of the limited partner, and it is submitted that any loss of limited partner status should take effect only on notice signed by the limited partner whose status is affected.⁴³ The original draft LRO proposed that the time-limit for registration of changes be increased from 7 days to 14 days in line with companies and LLPs.⁴⁴ It is submitted that this would reduce the accuracy of information available to third parties at Companies House and increase the likelihood of them making incorrect assessments of risk in relation to a particular firm.⁴⁵

Section 9 of the Limited Partnerships Act also provides that each general partner is liable to a fine of £1 per day for default in registering changes as required by that section.⁴⁶ This sum does not represent a real deterrent, and the original draft LRO rightly proposed to bring the level of fines into line with the much more significant penalties applicable to companies and LLPs.⁴⁷ It has been suggested that s.5, which provides that an improperly registered limited partnership is deemed to be a general partnership, may apply not only to defective first registration, but also to default in the registration of changes, with the result that limited partners would lose their liability if a change was not properly registered.⁴⁸ It is submitted that by expressly providing only the sanction of fines, s.9 implies that this is not so. In any event, the conclusiveness of the certificate would surely hold good

against subsequent, as well as initial, defects in registration.

***J.B.L. 586** The original draft LRO was accompanied by a draft statutory instrument applying, *inter alia*, Pt 35 of the Companies Act 2006 on the rectification of the register.⁴⁹ It is submitted that these provisions promote the accuracy of the register and there is no reason for limited partnerships to be treated differently.⁵⁰

Deregistration

The original draft LRO proposed a new procedure for deregistration (and reversal thereof). This would add clarity,⁵¹ since at present no procedure is specified and it is thought that half of all registered limited partnerships may be defunct, some of them for a century or more.⁵² The grounds proposed were that the partners had not started to carry on business in common with a view of profit, that the partnership had been dissolved, or that it did not have at least one limited partner and had not done so for six months. The procedure would be voluntary if the partners agreed,⁵³ or initiated by the Registrar if there were reasonable grounds to believe that one of the grounds existed and no response had been received from the partnership after two letters of inquiry and a notice in the Gazette.⁵⁴ The result would not be dissolution, but the removal of limited status.⁵⁵ It is to be noted that limited partners could be unaware of this, since although the general partners were required to state that all partners agreed, this could be untrue.⁵⁶

The limited partnership's own register of limited partners

The original draft LRO was accompanied by an alternative proposal that limited partnerships could opt to maintain their own register of limited partners and their capital contributions, subject to a notice to this effect being placed on the Companies House register and the partnership's own register being available for public inspection.⁵⁷ A person could then become or cease to be a limited partner as soon as the change was recorded on this register, subject to certain exceptions.⁵⁸

***J.B.L. 587** It is submitted that this proposal should be rejected and indeed, given the weight of opposition to it evidenced in the responses to the BERR Consultation Document, it is likely to be.⁵⁹ First, it would mean that third parties would not be able to rely on the details registered at Companies House as being accurate, because there could be a considerable delay between certain changes being recorded on the partnership's own register and taking effect, and those changes being recorded on the Companies House register. Secondly, it would impose an additional burden on partnerships because they would have to update both their own register and that at Companies House.⁶⁰

Duties

At present, the Limited Partnerships Act makes no amendment to the duties set out in ss.28--30 of the Partnership Act and thus limited partners are equally subject to them. The original draft LRO provided that limited partners were not subject to the duties in ss.28 (duty to disclose information) or 30 (duty to account for profits of a competing business), although they would remain subject to s.29 (duty to account for a benefit derived from a transaction concerning the partnership, its name, property or business connection).⁶¹ This would be a somewhat surprising reform, as the Law Commissions in their Report noted that "[m]any" consultees opposed removing any duties and only "almost as many" were in support,⁶² while the argument in favour of reform--that limited partners are usually passive investors and therefore conflicts of interest giving rise to breaches of the statutory duties are unlikely--is hardly compelling. However, in any event, limited partners would remain subject to the overriding duty of good faith, and any statutory exclusion of the duties would presumably be subject to contrary agreement by the partners.

Loss of limited liability

Permitted activities

Section 6 of the Limited Partnerships Act provides that if a limited partner takes part in "the management of the partnership business", he will lose his limited liability for debts and obligations of the firm incurred while he does so. However, it is not clear what activities are covered by this phrase, and thus what other activities may safely be undertaken by a limited partner without loss of limited liability. The original draft LRO proposed to include in the legislation a list of permitted activities, which was to be reviewed after two years. This is the only future reform expressly referred to in the

Explanatory Document accompanying the LRO.⁶³

***J.B.L. 588** Such a clarification would be welcome in principle,⁶⁴ and a similar approach has recently been adopted in a number of jurisdictions including Jersey,⁶⁵ Guernsey⁶⁶ and the Isle of Man,⁶⁷ but it is submitted that some of the activities listed in the original draft LRO do in fact constitute management, for example taking part in a decision about whether to approve a particular type of investment, or to dispose of the business⁶⁸ and should therefore be excluded from the list. For similar reasons to those discussed above in relation to the registration procedure, it is also important that any list is confined to activities which do not require authorisation under the Financial Services and Markets Act 2000.⁶⁹

It is also submitted that it should be stated that any list is non-exhaustive,⁷⁰ as it is impossible to identify exhaustively all activities which do not constitute management. This might lead to uncertainty concerning some unlisted activities, but it is submitted that this is preferable to certainty that they are prohibited.

Section 6 of the Limited Partnerships Act could also benefit from clarification because it simultaneously prohibits a limited partner from taking part in management of the partnership business yet assumes that a partner might do so by explicitly providing for the consequences, namely that he will lose his limited liability. These provisions should be clarified by removing the prohibition and simply stating that if a limited partner takes part in management he will lose his limited liability.⁷¹ The fundamental question of whether a limited partner should be excluded from management at all has been raised by some commentators,⁷² and in the United States s.303 of the Uniform Partnership Act 2001 permits a limited partner to participate in management without loss of limited liability, but it is submitted that restrictions on participation should be the price of achieving limited liability accompanied by privacy and tax transparency.

***J.B.L. 589 Withdrawal of capital**

Section 4 of the Limited Partnerships Act provides that a limited partner must make a contribution of capital, to which his liability is limited. It also provides that withdrawal of the contribution is prohibited and that, if it is withdrawn, the limited partner remains liable to the extent of the capital withdrawn. The limited partnership structure enables capital to be returned more easily than the corporate structure, despite the reforms of the Companies Act 2006 to the capital maintenance of limited companies.⁷³ However, the continuing liability in relation to returned capital means that it is common for limited partners to contribute virtually the whole of their investment through a loan, which is not subject to these rules, in order to minimise the lack of liquidity for institutional investors to which the current provisions may give rise.⁷⁴

The original draft LRO removed the obligation to make a capital contribution, and permitted withdrawal, with the resulting liability ending 12 months after the withdrawal.⁷⁵ It is submitted that removing the obligation on limited partners to contribute capital would be a desirable change, given the nonsense of a nominal amount such as £1 being contributed in order to comply with the current law. In addition, an express statement that withdrawals are permitted should be included for clarification.⁷⁶ At present, as with the rules on limited partners' participation in management discussed above, the Limited Partnership Act purports to prohibit behaviour which, by specifying the consequences, it then impliedly acknowledges may take place.

However, if capital is contributed, it is submitted that it should be available to creditors without any time-limit.⁷⁷ There is no inherent unfairness in imposing liability to the extent of any contribution, for debts and obligations incurred while the limited partner was a partner. A time-limit is therefore inappropriate. The BERR Consultation Document accompanying the original draft LRO included an alternative proposal that the partner be liable for longer period after withdrawal, for example five years; and responses included suggestions that there be a two-year time-limit in line with the provisions applicable to an LLP under s.214A IA 1986 whereby a liquidator may "claw back" LLP property withdrawn by a member within two years prior to the winding up in certain circumstances,⁷⁸ that the ***J.B.L. 590** time-limit be inapplicable where the limited partner should have been aware that the partnership was unable to pay its debts or would become so,⁷⁹ or that liability be co-extensive with the limitation period applicable to the claim.⁸⁰

Although s.4(2) of the Limited Partnerships Act allows the capital contribution to consist of "property valued at a stated amount", it does not provide a mechanism for valuation. The original draft LRO stated that the valuation could be agreed by the partners at the time of the contribution or in advance,

⁸¹ but no formula was provided. As assets could be overvalued to the detriment of third parties, a more objective method of valuation should be prescribed.⁸²

By way of comparison, in the United States, the Uniform Partnership Act 2001 does not impose any obligation on limited partners to make a capital contribution. In Jersey⁸³ and Guernsey,⁸⁴ limited partners are only liable to repay capital withdrawn if the partnership was insolvent at the time of the withdrawal, and even then there is a time-limit of six months on the obligation to repay. In the Isle of Man,⁸⁵ the return of capital is only permissible if the partnership is solvent and the general partner makes a statutory declaration to this effect at the time of withdrawal. If these requirements are not satisfied, the limited partner is liable to repay the withdrawn capital, and this is subject to a time-limit of six months only if the partnership is a collective investment scheme.

Dissolution and winding up

Sections 33 and 35 of the Partnership Act as amended by s.6 of the Limited Partnerships Act provide, inter alia, that subject to contrary agreement a limited partnership will be dissolved automatically if a general partner dies or becomes bankrupt, but not if a limited partner does so, and that judicial dissolution on the grounds of a partner's mental incapacity only applies to a limited partner if his share cannot otherwise be realised.

The original draft LRO proposed to additionally exclude from the automatic dissolution provisions the dissolution or insolvency of a corporate limited partner, so that those events were treated in the same way as the death or bankruptcy of an individual limited partner.⁸⁶ It also proposed removing the provision for judicial dissolution on the grounds of mental incapacity. This would bring the Limited Partnerships Act into line with the Partnership Act, from which the corresponding provision has been deleted, since the relevant powers are now contained in the mental health legislation.⁸⁷

***J.B.L. 591** No special provision is currently made for the death or departure of the last general or limited partner, and indeed the consequences are unclear. Although a limited partnership is required to have at least one general and one limited partner, the departure of a limited partner does not dissolve the partnership, and the departure of a general partner will not do so if there is contrary agreement. Dissolution within a specified period of the departure of the last general or limited partner unless a replacement is admitted, as in the United States,⁸⁸ would be a sensible solution. However, the 2008 draft reforms proposed the more complex provision that if there were no general partner for six months, the partnership would dissolve,⁸⁹ whereas if there were no limited partners for six months, the general partners must apply to deregister and the firm become a general partnership.⁹⁰ It is submitted that it would be preferable to make similar provision regardless of which type of partner is absent from the partnership, in order to reduce the scope for confusion, but clarify whether any remaining limited partners would retain their limited liability for debts and obligations incurred during this period,⁹¹ or become general partners.⁹² If the former, creditors would be at risk of having no recourse to the partners' private assets.

Section 38 of the Partnership Act, as amended by s.6 of the Limited Partnerships Act, provides that in the event of dissolution the partnership is to be wound up by "the general partners" only. The original draft LRO usefully stated that the general partners could agree among themselves that only some of them would conduct the winding up and that the limited partners could conduct the winding up if there were no general partners.⁹³

Transitional arrangements

The LRO applies only to limited partnerships registered on or after its entry into force.⁹⁴ If further reforms are introduced, each applying only to partnerships registered on or after the entry into force of the relevant LRO, considerable confusion will result.⁹⁵ The original draft LRO required all limited partnerships to re-register in accordance with its provisions, and mandated the de-registration of non-responding partnerships after two years,⁹⁶ but the gradual implementation of reforms as currently proposed militates against this approach. It would therefore be preferable for the reforms to apply to all limited partnerships as they are introduced. This would also avoid the disadvantages of compulsory re-registration suggested by a number of commentators, some of whom were concerned that any default in re-registration would have serious financial consequences for the limited partners, who could become general partners if the partnership was not ***J.B.L. 592** properly re-registered.⁹⁷ Others were concerned at the impact on limited partnerships created to hold certain agricultural leases in Scotland under the Agricultural Holdings (Scotland) Act 2003, since the provisions of that Act imposing restrictions on the grant of new leases could be triggered if a limited

partnership, and thus its agricultural tenancy, were terminated by operation of the transitional provisions.⁹⁸

Other potential reforms

A number of potential reforms not included in the original draft LRO have nonetheless been mooted by other commentators, and will now be considered.

Definition of “persons”

At present, the definition in s.1 of the Partnership Act requires partners to be “persons” and thus bodies which do not have natural or legal personality, such as partnerships themselves, cannot be partners. It has been suggested that this should be amended to make it possible to register as a limited partner a trust or undertaking, including another limited partnership, in order to facilitate the use of limited partnerships by such bodies.⁹⁹ It is submitted that this is entirely inappropriate; the meaning of a “person” is clear, and modification of the law to include bodies that do not have natural or legal personality would introduce confusion and strike at the heart of what constitutes a partnership.

Definition of “business”

Section 45 of the Partnership Act defines “business”, a term which is key to the definition of a partnership in s.1, as “every trade, occupation, or profession”. In *Smith v Anderson*¹⁰⁰ the Court of Appeal commented, obiter, that a commercial activity involving investment “for the purpose of obtaining gain from a repetition of investments” would constitute a business and, as mentioned in the introduction to this article, HMRC has confirmed that a limited partnership established for the purpose of raising funds for investment into companies will be regarded as carrying on a business and will constitute a partnership under s.1 for taxation purposes (and thus be treated as tax transparent).¹⁰¹ However, as limited partnerships are used **J.B.L. 593* primarily as investment vehicles, the definition of “business” in s.45 should, for the avoidance of doubt, include an express statement that “business” includes investment activities.¹⁰²

Speed of registration

Given that a limited partnership is to be formed when registered, there is merit in ensuring that Companies House is able to register a partnership, or its change of name, on a guaranteed same day basis, as it can with companies and LLPs.¹⁰³

Disclosure of limited partner status

Part 41 of the CA 2006 provides that all partners' names must be disclosed if the partnership name does not consist of all their names, but there is no requirement to disclose the status of limited partners as such. Although this information can be obtained at Companies House, it is submitted that, in order to protect third parties, the wider disclosure requirements of Pt 41 should apply to limited partner status.

Separate legal personality

Currently, partnerships do not have separate legal personality (except in Scotland).¹⁰⁴ The Law Commissions proposed to give both limited and general partnerships legal personality in order to provide an accurate reflection of commercial reality, conceptual clarity, consistency with the developments in other jurisdictions and a solution to various practical problems including the execution of deeds, enforcement of partnership debts, transfer of partnership property and insolvency.¹⁰⁵ At present, actions against a partnership are subject to special rules under the Civil Procedure Rules (CPR), and it can be difficult for a third party to identify the appropriate defendants and which assets are available for enforcement of any judgment, particularly where there has been a change of partners. If a partnership were a separate entity able to own its own assets, this would--among other things--enable them to execute deeds, simplify the enforcement of partnership debts, and simplify property transactions and insolvency proceedings by facilitating the process of identifying what belongs to the partnership and what to particular partners.

Lack of legal personality also means that a partnership cannot execute a deed but instead must use

the more complicated procedure of all partners executing the deed or authorising an attorney to do so. The introduction of separate legal **J.B.L. 594* personality would enable this to be simplified, and the Law Commissions proposed that a document be duly executed if expressed to be so and signed by a single partner.¹⁰⁶

It is therefore regrettable that the Government has decided not to give partnerships separate legal personality,¹⁰⁷ although it does avoid the difficulties which might have arisen as to the tax treatment in some overseas jurisdictions of English partnerships with separate legal personality.¹⁰⁸

However, there are other jurisdictions which allow limited partnerships to benefit from separate legal personality while at the same time retaining tax transparency, including Scotland (see above) and the United States.¹⁰⁹ In Jersey, although standard limited partnerships do not have separate legal personality, two variations on the form are planned which would: the separate limited partnership and the incorporated partnership.¹¹⁰ In Guernsey a limited partnership may opt into separate legal personality, although only on first registration.¹¹¹

Agency

Section 6 of the Limited Partnerships Act provides that that a limited partner has no power to bind the partnership. The opportunity should be taken to make it clear that this relates to implied authority, and that a limited partner may still be actually authorised to act on behalf of the partnership.

A model agreement

At present there is no model partnership agreement equivalent to the model articles of association available to companies (including those commonly known as Table A).¹¹² Although the requirement of registration is more likely to focus the minds of partners towards some sort of agreement than is the case for general partnerships, there will still be limited partnerships which have no comprehensive agreement, with the consequent potential for disputes and, ultimately, costly litigation. A partnership which wishes to have a written agreement must either incur the costs of professional advice, or draw up its own agreement and risk missing a relevant provision or including an inappropriate one. Indeed, both the DTI and the Law Commissions identified the lack of a model agreement as a problem for **J.B.L. 595* partnerships¹¹³ and an agreement capable of easy use or adaptation by partnerships would therefore be desirable. As the proposed reforms are confined to limited partnerships, a model agreement specifically for limited partnerships could be devised, but its provisions would largely be applicable to both limited and general partnerships and alternative clauses could ultimately be provided, where necessary.

Default provisions

Even if a model partnership agreement were to be provided, there would still be limited partnerships without an agreement, to which the default provisions of the legislation would apply. The current legislation should therefore be amended to provide a more comprehensible and appropriate set of default provisions. Certain provisions of the LRO and the original draft LRO discussed above would contribute to this, but other reforms to the Partnership Act are also required. Some additional provisions are required (such as the possibility of expulsion of a partner on application to the court), and certain existing provisions must be made more appropriate for the majority of partnerships (in particular, notice of departure by a general partner should not automatically dissolve the partnership).

It is acknowledged that these amendments would also affect general partnerships, and would thus go beyond the scope of the LROs as currently envisaged by the Government. However, the Government's rejection of reforms to general partnership law is a self-denying ordinance, and it is submitted that it should not prevent the pursuit of worthwhile reforms.

Tax treatment

When considering any reforms to limited partnership law, the elephant in the room is always their impact on the tax treatment of limited partnerships. Given the significance of tax transparency to partnerships,¹¹⁴ it is essential that HRMC confirms that any proposed changes will not affect this.¹¹⁵

Conclusion

It is, in many respects, regrettable that the more far-reaching reforms to both general and partnership

law proposed by the Law Commissions¹¹⁶ are not being pursued. It is also regrettable that the Government's original proposals to consolidate the Partnership and Limited Partnerships Acts, and to reform limited partnership law through a single LRO, are not being pursued. It is thus hard to resist the conclusion that an opportunity to reform "a generic and rather archaic piece of legislation"¹¹⁷ has been missed, and that the reforms have suffered death by a thousand cuts. However, it would perhaps be unfair to categorise the reforms merely as a storm **J.B.L. 596* in a teacup. While it is difficult to predict how extensive any further reforms will be, the two reforms made by the LRO are significant and welcome, and the proposals in the original draft LRO suggest that further improvements to limited partnership law, including a list of permitted activities for limited partners, may be forthcoming.

Reader in Law, Nottingham Law School. I wish to thank Professor David Milman for his comments on an earlier draft of this article. Any errors or omissions remain my own.

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1. However, LLPs, despite the name, are bodies corporate to which many provisions of the Companies Act 2006 are applied, although they are taxed as partnerships and have default provisions resembling partnership law.
2. HM Treasury, "Institutional Investment in the United Kingdom: A Review" (March 6, 2001) (the Myners Review).
3. BVCA statement approved by the Inland Revenue and the Department of Trade and Industry on the use of limited partnerships as venture capital investment funds (May 26, 1987), at <http://www.hmrc.gov.uk/manuals/ctmanual/CTM36580.htm> [Accessed June 27, 2011]. See also the Memorandum of Understanding between the BVCA and Inland Revenue on the income tax treatment of Venture Capital and Private Equity Limited Partnerships and Carried Interest (July 25, 2003), at http://www.hmrc.gov.uk/shareschemes/bvca_and_fb2003_carried_interest.pdf [Accessed June 27, 2011]. However, it has been argued that the introduction by the Finance Act 2003 (Pt 4 and Schs 3--20) of stamp duty land tax (SDLT) on the transfer of limited partnership interests has impacted adversely on English limited partnerships as opposed to offshore unit trusts with which they compete as a business entity (Wragge & Co and British Property Federation (BPF)), responses (archived at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]) to BERR, "Reform of Limited Partnership Law: Legislative Reform Order to repeal and replace the Limited Partnerships Act 1907 -- A Consultation Document" (August 2008), at <http://www.bis.gov.uk/files/file47577.pdf> [Accessed June 27, 2011].
4. "Partnership Law: a Joint Consultation Document" (2000), Law Commission Consultation Document No.159 and Scottish Law Commission Discussion Paper No.111; and "Limited Partnerships Act Limited Partnerships: A Joint Consultation Document" (2001), Law Commission Consultation Document No.161 and Scottish Law Commission Discussion Paper No.118. See further E. Deards, "Partnership Law in the 21st Century" [2001] J.B.L. 357 and "Limited Partnerships: Limited Reforms?" [2003] J.B.L. 435.
5. "Report on Partnership Law" (2003), Law Com No.283 and Scot Law Com No.192, at http://www.justice.gov.uk/lawcommission/docs/lc283_Partnership_Law.pdf [Accessed June 27, 2011].
6. DTI "Reform of Partnership Law: The economic impact -- A Consultation Document" (April 2004), at <http://www.bis.gov.uk/files/file23033.pdf> [Accessed June 27, 2011] and DTI, "Summary of responses to the consultation on reform of partnership law: the economic impact" (July 2006), at <http://www.bis.gov.uk/files/file32328.pdf> [Accessed June 27, 2011].
7. Written ministerial statement on Partnership Reform by Ian McCartney, Minister for Trade Investment and Foreign Affairs (July 20, 2006).
8. BERR, "Reform of Limited Partnership Law", 2008 at <http://www.bis.gov.uk/files/file47577.pdf> [Accessed June 27, 2011].
9. BERR, "Reform of Limited Partnership Law", 2008 at <http://www.bis.gov.uk/files/file47577.pdf> [Accessed June 27, 2011].
10. BERR, "Reform of Limited Partnership law: Government Response to the Consultation on a Legislative Reform Order to repeal and replace the Limited Partnerships Act 1907" (March 25, 2009), at <http://www.bis.gov.uk/files/file50705.pdf> [Accessed June 27, 2011].
11. SI 2009/1940.
12. See http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111480014_en.pdf [Accessed June 27, 2011]. See also BERR, "The Legislative Reform (Limited Partnerships) Order 2009: Explanatory Document" (June 2009), at <http://www.bis.gov.uk/files/file51586.pdf> [Accessed June 27, 2011]; and the House of Commons Regulatory Reform Committee "Draft Legislative Reform (Limited Partnerships) Order 2009", Sixth Report of 2008--2009, at

- <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/794/794.pdf> [Accessed June 27, 2011].
13. Myners Review, 2001, para 12.103. See also Deards, "Limited Partnerships: Limited Reforms?" [2003] J.B.L. 435; and S. Sheikh, "Limited Partnerships Act Limited Partnerships: Time for Reform" (2002) 23 *Company Lawyer* 179.
 14. See, for example, *Rayner & Co v Rhodes* (1926) 24 Ll. L. Rep. 25 and *McCarthaigh v Daly* [1986] I.L.R.M. 116.
 15. Companies Act 2006 s.15.
 16. Limited Liability Partnership Act 2000 s.3.
 17. Draft s.44B. This was reinforced by draft s.44B which provided that a limited partner may be registered as such at a time he is not carrying on business in common with the other partners. These provisions were welcomed by Allen & Overy, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
 18. R. l'Anson Banks, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
 19. For the contrary view, see S. Jelf and l'Anson Banks' responses to the BERR Consultation Document, <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
 20. Partnership Act 1909.
 21. Companies House, "Limited Partnership Act -- GB02" (February 2008), Version 10.
 22. This tort consists of a misrepresentation, made by a trader in the course of business to a prospective consumer of the goods or services supplied by him, which is calculated to damage the business or goodwill of another trader and which causes such damage (per Lord Diplock in *Erven Warnink BV v Townend & Sons (Hull) Ltd* [1979] 2 All E.R. 927 HL at 932--933).
 23. Draft s.44Q.
 24. Draft ss.44R and 44S.
 25. Draft s.44CC and draft Companies Act 2006 (Index of Company Names and Consequential Provisions relating to Limited Partnerships Act Limited Partnerships) Order 2008, Annex C to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
 26. See the responses to the BERR Consultation Document of Allen & Overy, AREF, Berwin Leighton Paisner, CMS Cameron McKenna and Nabarro LLP, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
 27. Limited Liability Partnerships (Applications of Companies Act 2006) Regulations 2009 SI 1009/1804 Sch.1 para.3.
 28. British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and The law firms listed in Appendix 1, responses to the BERR Consultation Document, <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]; and S. Mazzier "BERR steps up the pace of change with the reform of limited partnership law" (2009) 1 J.I.B.F.L. 26.
 29. Draft ss.44L, 44N, 44P, 44T and 44U.
 30. Draft s.44L.
 31. Addleshaw Goddard LLP, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
 32. Nabarro LLP, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
 33. Draft s.44N.
 34. Companies Act 2006 ss.240--246, as modified and applied to LLPs by reg.19 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (SI 2009/1804). See also ACCA and the SRA, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].

35. ACCA, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]. The original draft LRO (s.44N) instead provided that if the application for registration related to an existing partnership, its date of formation must be stated. It is not clear what advantage this would have bestowed, given the proposal that a limited partnership be conclusively regarded as formed on registration and issue of the certificate.
36. Draft ss.44B and 44U.
37. British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and The law firms listed in Appendix 1, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]; and Mazzier, "BERR steps up the pace of change with the reform of limited partnership law" (2009) 1 J.I.B.F.L. 26.
38. Draft s.44N.
39. British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and The law firms listed in Appendix 1, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]; and Mazzier, "BERR steps up the pace of change with the reform of limited partnership law" (2009) 1 J.I.B.F.L. 26
40. Companies Act 2006 ss.7--8.
41. Limited Liability Partnerships Act 2001 s.2.
42. Draft s.44U.
43. Allen & Overy and the British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and the law firms listed in Appendix 1, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
44. Draft s.44V.
45. The reference at para.61 of the BERR Consultation Document, 2008, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011] to third parties having access to this information "more quickly" is misleading, since this is only true in comparison to the Law Commissions' proposal that the time-limit should be 28 days (Law Commissions, "Report on Partnership Law", 2003, para.15.51). The Chancery Bar, in response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011], suggested seven days for urgent matters and 28 days for less important changes
46. Name, nature of business, principal place of business, partners or their names, term or character of partnership, limited partner's contributions or change of partner status.
47. However, these fines would only have been applicable to certain of the changes specified in s.9 (change of partners, their names or addresses, or the capital contributed by limited partner) and failure to deregister where there are no limited partners (draft s.44W).
48. R.C. I'Anson, *Lindley & Banks on Partnership*, 18th edn (London: Sweet & Maxwell, 2002), para.29--28.
49. Draft s.44CC and draft Companies Act 2006 (Index of Company Names and Consequential Provisions relating to Limited Partnerships Act Limited Partnerships) Order 2008, Annex C to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
50. See also ACCA response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
51. Draft ss.44X, 44Y, 44Z and 44AA.
52. BERR Consultation Document, paras 85 and 107, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
53. Draft s.44X.
54. Draft s.44Y.
55. Draft s.44Z.
56. Gillespie Macandrew response to the BERR Consultation Document, at

- <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
57. Annex D to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
58. If a new limited partner had previously been a general partner, in which case the change would have to be notified to the Registrar within 14 days, as would changes in limited partners' names or capital contributions. Failure to register these changes within 14 days, or to register an annual update, would be a criminal offence punishable on summary conviction by a fine, and the liability imposed on limited partners for 12 months after withdrawal of capital would run only from registration of the reduction. Any change in a limited partner's name, a person ceasing to be a limited partner on his death or its dissolution or any change to a limited partner's capital contribution and failure to do so would constitute a criminal offence by the general partners.
59. There were, however, a minority of responses in support: see the responses to the BERR Consultation Document of Covington & Burling LLP, Nabarro LLP, Norton Rose, Wragge & Co and Tods Murray LLP, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
60. It has also been suggested that it might give an unfair advantage to limited partnerships over LLPs since the latter do not have the option of certain membership changes taking effect immediately upon registration in their own register (Social Enterprise Coalition response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]).
61. Draft s.44H.
62. Law Commissions, "Report on Partnership Law", 2003, para.18.10.
63. Draft Schedule.
64. Myners Review, 2001, para.12.104. See also British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and The law firms listed in Appendix 1, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]; Mazzier, "BERR steps up the pace of change with the reform of limited partnership law" (2009) 1 J.I.B.F.L. 26; F. Duggan "Farrer & Co Briefings: Limited Partnership Reform", at <http://www.farrer.co.uk/Default.aspx?SID=733&CID=1159&ctID=11> [Accessed June 27, 2011]; and the majority of the responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]. However, the principle of a list of permitted activities was opposed by the Chancery Bar and Gillespie Macandrew in their responses to the BERR Consultation Document.
65. Limited Partnerships (Jersey) Law 1994 s.19.
66. Limited Partnerships (Guernsey) Law 1995 s.12(4).
67. Partnership Act 1909 s.49(1A) as inserted by the International Business Act 1994.
68. ACCA and Chancery Bar, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
69. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and the FSA "Perimeter Guidance Manual" (June 2011), Ch.10, at <http://fsahandbook.info/FSA/handbook/PERG/10.pdf> [Accessed June 28, 2011]. See also the Association of Pension Lawyers, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
70. Allen & Overy, Addleshaw Goddard LLP, Eversheds, Lovells and Wragge & Co, cf. Berwin Leighton Paisner, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]. See also J.A. McCahery and E.P.M. Vermeulen, "Limited Partnership Reform in the United Kingdom: A Competitive, Venture Capital Oriented Business Form" (2004) 5 *European Business Organization Law Review* 61, 83.
71. Allen & Overy, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
72. Gillespie Macandrew, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
73. Draft ss.641 et seq.

74. See further Association of Pension Lawyers, AREF, Covington & Burling LLP and Osborne Clarke, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
75. Draft ss.44D, 44E and 44F.
76. Chancery Bar, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
77. The Committee of Scottish Clearing Bankers (CSCB), response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
78. The circumstances are that the member had reasonable grounds to believe that the LLP was unable to pay its debts at the time of the withdrawal or as a result, and knew or ought to have concluded that there was no reasonable prospect that the LLP would avoid insolvent liquidation. See Norton Rose and Berwin Leighton Paisner, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
79. Berwin Leighton Paisner, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
80. G. Morse, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
81. Draft s.44E.
82. An alternative, that the valuation by the partners explicitly be required to be made in good faith, has been suggested (l'Anson Banks, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]) but this would seem to add little to the overriding duty of good faith to which all partners are subject.
83. Limited Partnerships (Jersey) Law 1994 s.17.
84. Limited Partnerships (Guernsey) Law 1995 s.21(2).
85. Partnership Act 1909 s.49A as amended by the Limited Liability Companies Act 1996.
86. Draft s.44J.
87. Mental Capacity Act 2005 ss.16 and 18 provide that the Court of Protection may order dissolution where a partner lacks mental capacity in relation to matters concerning his property and affairs.
88. Uniform Limited Partnership Act 2001 ss.301, 401 and 801.
89. Draft s.44J(5).
90. Draft s.44J(4).
91. Addleshaw Goddard LLP, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
92. Allen & Overy, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
93. Draft s.44K.
94. LRO art.2
95. Nabarro LLP, response to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
96. Draft art.13.
97. The British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and the law firms listed in Appendix 1, CMS Cameron McKenna, and Gillespie Macandrew, responses to the BERR Consultation

- Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
98. Scottish Estates Business Group, Scottish Rural Property Association (SRPBA) and the Scottish Rural Directorate, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011]. The SEBG also considers that the implications for such partnerships would be contrary to the stated aim of the proposals to remove doubts about the operation of a limited partnership and that this would mean that a Legislative Reform Order, which is restricted to removing or reducing any burden resulting from legislation, would be inappropriate.
99. l'Anson Banks, the British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and the law firms listed in Appendix 1, and Covington & Burling LLP, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
100. *Smith v Anderson* (1880) L.R. 15 Ch. D. 247 CA.
101. BVCA statement, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
102. See further Deards, "Limited Partnerships: Limited Reforms?" [2003] J.B.L. 435 and the British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and the law firms listed in Appendix 1, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
103. Mazzier, "BERR steps up the pace of change with the reform of limited partnership law" (2009) 1 J.I.B.F.L. 26; and British Private Equity and Venture Capital Association, the Association of Partnership Practitioners and the law firms listed in Appendix 1, Eversheds, Addleshaw Goddard LLP, CMS Cameron McKenna and the Law Society, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
104. Partnership Act s.4.
105. Law Commissions, "Report on Partnership Law", 2003. See further T. Prime and G. Scanlan, "Limited partnership reform -- the entity, fiduciary duties and the execution of deeds" (2007) 28 *Company Lawyer* 262.
106. This would be consistent with s.44 of the Companies Act 2006 which permits a deed to be executed by a company where a single director signs. It has been suggested that that deeds should be signed by two partners as a check on fraud (Prime and Scanlan, "Limited partnership reform" (2007) 28 *Company Lawyer* 262), but this proposal was made at a time when the applicable companies legislation, CA 1985, required the signature of two directors.
107. See also Eversheds, Covington & Burling LLP, the Law Society, Lovells, the Social Enterprise Coalition and Wragge & Co, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
108. These concerns led the Law Commissions, when proposing to confer separate legal personality on partnerships, to provide for a form of limited partnership without legal personality, to be known as a special limited partnership (cl.73 and Sch.10 to the Law Commissions' draft Bill, "Report on Partnership Law", 2003).
109. Uniform Limited Partnership Act 2001 s.104. See further D.J. Weidner, "Pitfalls in Partnership Law Reform: Some United States Experience" (2000--2001) 26 J. Corp. L. 1031.
110. See further B. Robins, "Home of the range", *The Lawyer*, July 27, 2009.
111. Limited Partnerships (Guernsey) Law 1995 s.9(A).
112. The Companies (Model Articles) Regulations 2008 (SI 2008/3229).
113. Law Commission, "Reform of the Law Applicable to Private Companies: a Feasibility Study" annexed to DTI, "Company Law Review: The law applicable to private companies: A Consultative Document" (November 1994, URN 94/529) and "Partnership Law: a Joint Consultation Document", 2000, para.1.1 and Pt XVI. See also J. Freedman, "Small Businesses and the Corporate Form: Burden or Privilege?" (1994) 57 M.L.R. 555, 584.
114. Income and Corporation Taxes Act 1988 s.118ZA(1) and Taxation of Chargeable Gains Act 1992 s.59A(1).
115. See further The British Private Equity and Venture Capital Association and the APP, Allen & Overy, AREF and CMS Cameron McKenna, responses to the BERR Consultation Document, at <http://webarchive.nationalarchives.gov.uk/20090413112312/http://www.berr.gov.uk/files/file50724.pdf> [Accessed June 27, 2011].
116. Law Commissions, "Report on Partnership Law", 2003.

[117.](#) Myners Review, 2001, para.12.103.

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