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Respectfully submitted on behalf of members of EMPEA, the global industry association for private capital in emerging markets

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By email: ReviewofLimitedPartnershipLaw@beis.gov.uk

31 March 2017

Dear Elayne,

Re: Review of Limited Partnership Law

EMPEA is the non-profit global industry association for private capital¹ in emerging markets. Founded in 2004, EMPEA has over 300 member firms with offices in more than 100 countries including many in the European Union (“EU”) and the European Economic Area. EMPEA seeks to be a thoughtful, neutral and objective voice; its industry research is deep and respected; and its training and educational programs are sought out for their strength and impact.

Executive Summary

We welcome the opportunity to comment on your review of Limited Partnership Law. Limited partnerships are the vehicle of choice for private equity and venture capital funds, and both English and Scottish limited partnerships are commonly used to bring significant economic benefit in emerging markets across the globe.

In summary, it is our view that, if limited partnerships are being used as an enabler of criminal activity, this should be tackled primarily using existing investigative and enforcement powers. Given the significant use of Scottish limited partnerships for legitimate enterprises, we would strongly advocate against increasing regulatory and compliance burdens on limited partnerships. In addition, we have reviewed the response prepared by the British Private Equity & Venture Capital Association (“BVCA”). We support and second that response.

¹ “Private capital” encompasses private equity and venture capital and adjacent investment approaches including infrastructure, real assets, private credit and institutional quality impact investing

Private Equity: a global industry contributing to the global economy

The UK is one of the global hubs for venture capital and private equity, including for the formation of capital pools investing in developing markets, and our members have demonstrated their consistent interest in utilizing the UK's well regarded legal regime. It is our view that one of the driving reasons that the UK is held in such esteem by private equity investors is the availability and ease of use of legal entities such as the UK limited partnership.

EMPEA welcomes the changes put forward in the Legislative Reform Order (LRO) for Private Fund Limited Partnerships. These are designed to benefit the UK's venture capital and private equity funds industry and indirectly the emerging market economies in which the UK's funds industry engages.

We therefore believe the current timetable for the implementation of the LRO should proceed as planned.

EMPEA offers responses only to questions, and to the extent of EMPEA's specialized emerging markets expertise.

Responses

1. Does the significant increase in Limited Partnerships registered in Scotland bring a similar increase in economic benefit to Scotland? We would be very grateful for the details of the nature of that benefit. (Q1)

N/A as beyond the scope of EMPEA specialized expertise.

2. Do you have examples, or specific evidence of why Limited Partnerships registered in Scotland have become more popular in the last 5 years than those Limited Partnerships registered in England, Wales and Northern Ireland?

Limited Partnerships in UK are primarily governed by the Limited Partnerships Act 1907 and Partnership Act 1890, which have remained, until recently, largely unchanged since 1907 and 1890 respectively. These acts have become outdated in a number of respects. As a result, BEIS (and previously BIS) and HMT have been working closely with the investment funds industry to streamline the Limited Partnerships Act 1907, while still providing appropriate transparency and protection for limited partners and creditors.

One cause of increased registration in Scotland and other areas of the UK may be that the changes to date have made limited partnerships (both in Scotland and the rest of the UK) more attractive to a number of investment managers, including managers who invest in emerging markets. Scottish limited partnerships differ from other limited partnerships in that they have separate legal personality. Thus they are particularly used in a number of areas where English limited partnerships are less well suited (e.g. as co-investment vehicles and funds of funds vehicles.)

One of the historic drawbacks of Scottish limited partnerships were the various general Scottish law

formalities and practices (e.g. in particular in relation to the execution of documents) which made the use of Scottish limited partnerships more cumbersome. The most significant change to these requirements was the introduction in July 2015 of counterparts execution in Scotland. This has been particularly well received by international fund managers and makes Scottish limited partnerships a more attractive vehicle for investment in jurisdictions globally.

3. What forms of economic activity or sectors of the economy make the most use of those Limited Partnerships registered in Scotland?

N/A as beyond the scope of EMPEA specialized expertise.

4. What could the UK government do to reduce the potential of Limited Partnerships registered in Scotland being used as an enabler of criminal activity, whilst retaining some or all of the aspects of Scottish Limited Partnership structures which are beneficial?

In our view, if limited partnerships are being used as an enabler of criminal activity, this should be addressed primarily through the use of existing investigative and enforcement powers and in particular, monitoring compliance with anti-money laundering (AML) legislation.

Given the significant use of Scottish (and other UK) limited partnerships for legitimate enterprises, we would strongly advocate not adding additional burdens on limited partnerships.

We therefore propose that the government does not add restrictions or burdens to legitimate limited partnerships.

5. We would like to know whether this basic information requested at the time of registration should be enhanced and if so what additional information might be useful and why? Should there be a requirement to update it at regular intervals?

We believe that the information required at the time of registration is appropriate and either similar or more detailed than the information required in other jurisdictions. In addition, limited partnerships already need to update the register when there is a change in the partners or principal place of business.

Therefore, we do not believe there would be an additional benefit to creating duplicative information requirements that may result in an undue burden on the resources of the regulatory authorities.

6. We would like to also consider what levels of transparency would be appropriate to Limited Partnerships, Private Fund Limited Partnerships and Limited Partnerships registered in Scotland?

We believe that the strength of the current regulatory framework and the abilities of the respective investigative and enforcement authorities when combined with the current transparency obligations, (along

with the registration details required), help to achieve the objectives of the regulatory authorities. Thus, we do not believe an expansion of levels of transparency is required.

7. What are the costs of registering a Limited Partnership / Scottish Limited Partnership under the current regime?

We understand that Companies House in Edinburgh offers two levels of service for the registration of Scottish limited partnerships and the costs involved are £100 for a same day registration and £20 for the regular process. Companies House in Cardiff offers the same level of service, with the same fee structure, in respect of registration of English limited partnerships.

There will also be the fees and costs of advisers to take into account. This may include tax and legal advisers. The level of fees will vary considerably depending on the nature and complexity of arrangements, and could be substantial.

8. What would the costs be of enhancing the regime to include more transparency requirements - for example annual reporting of accounts, re-confirming identities of partners or principal place of business?

As referred to in question 5, limited partnerships already need to update the register when there is a change in the partners or principal place of business. Therefore, an annual report on top of this would not appear to provide any additional information.

Qualifying limited partnerships also already need to file annual accounts under the Partnership Accounts Regulation.

There will also be the fees and costs of advisers to take into account. This may include tax and legal advisers. The level of fees will vary considerably depending on the nature and complexity of arrangements, and could be substantial.

9. Do you have any evidence that increased regulatory requirements would have an adverse effect on legitimate use of Limited Partnerships registered in England, Wales, Northern Ireland and Scotland?

Limited partnerships used as global institutional investment vehicles are, in general, already subject to significant regulation (e.g. under the AIFMD).

While we cannot comment on the effect of increased regulatory requirements without understanding the scope of the regulation, we would note that the level of regulation is a key consideration in determining the location of an investment manager's business. This is a delicate balance –as a general rule, an investment manager is looking for a sensible, robust and stable regulatory landscape to provide protection to their investors without creating unnecessary levels of bureaucracy or cost.

10. We would welcome views on whether this level of transparency is adequate for Limited Partnerships, Private Fund Limited Partnerships and Limited registered in Scotland?

We believe that the level of transparency is adequate. Please see our responses to questions 5, 6 8 and 9.

We would also note that the existing level of transparency is already more detailed than in a number of other jurisdictions.

11. Would this level of transparency have any adverse effects on Limited Partnerships or Limited Partnerships registered in Scotland, and if so, what might they be?

Given that Qualifying limited partnerships already need to either (i) publish their accounts at Companies House (if they have a UK-based general partner); or (ii) make the accounts available to the public at an address in UK (in other circumstances), we do not see any additional benefit or improved transparency in requiring them to also file these accounts .

Additionally, under applicable Tax Information Provisions, Limited Partnerships which are ‘Financial Institutions’ already have to report on their account holders and so in this respect are already subject to stringent transparency rules.

We believe additional filing and disclosure requirements would not only increase the internal costs of compliance for funds, but may deter certain members of the industry from taking advantage of UK limited partnerships.

12. Given that formation agents are already subject to money laundering regulations, should there be any additional requirements placed on these entities? If so, what should these be?

We do not believe that there should be additional requirements.

13. Why is it important for a Limited Partnership or Limited Partnership registered in Scotland to be able to move all of its activities outside of the UK whilst still being governed by UK legislation?

UK limited partnerships are commonly used by investment fund managers as a springboard for global investment because of their flexibility. One key area of flexibility is in their ability to move some or all of its activities outside of the UK. Investment fund managers seek consistency in the application of the laws and regulations, as well as relative certainty and consistency for all partners. The esteem and the integrity of the UK regulatory framework are essential to that goal. As a result, if limited partnerships are restricted in determining their principal place of business, it may deter the use of UK limited partnerships for legitimate business activity without creating any benefits for fund and investment managers.

14. What benefit does a UK registered Limited Partnership or a Limited Partnership registered in Scotland bring to the UK if its Principle Place of Business and all of its activities are outside of the UK?

The direct benefit in making UK limited partnerships flexible in this regard is that fund and investment managers are able to utilize the services and resources of UK-based providers. This includes soliciting the services of UK-based formation agents, accountants, administrators, lawyers and other service providers.

The flexibility of limited partnerships in this regard has been one of the reasons why the UK has become a hub for private equity and other private fund managers wishing to invest globally. In turn, this relationship creates significant economic benefits for the UK as managers continue to turn to highly skilled UK-based professionals.

15. What would be the impact of requiring a Limited Partnership or Limited Partnership registered in Scotland to maintain some form of presence within the UK at all times?

As per our response to question 14, EMPEA believes that adding additional restrictions or barriers may make the UK appear a less attractive jurisdiction for fund managers and impact the amount of global investment running through the UK.

16. We would also be interested in views on whether a Limited Partnership or a Limited Partnership registered in Scotland should be struck off the register if there are convictions against the partners or the entity for illegal activity.

We do not think that a conviction against the partners or the entity for illegal activity should result in the partnership being struck off the register, any more than a conviction against a company's directors or shareholders would or should result in a company being struck off the register of companies. Additionally, the facts and circumstances might be taken into account similar to the requirements of other supervisory authorities.

17. The UK government would also welcome views on the real impact of striking off a legitimate Limited Partnership or Limited Partnership registered in Scotland without the knowledge of the partners and what could be done to mitigate any adverse impact.

The key requirement of an investor in an institutional investor fund is that they have limited liability for the debts and liabilities of the partnership. Losing limited liability would have a material adverse impact on the limited partner – they would not just have liability for their share of the partnership's liabilities (which they would have if they had invested directly in the relevant assets), but they would potentially have liability, on an uncapped basis, for every other investor's share of the partnership. Losing limited liability is simply not a risk that institutional investors would be prepared to take. This in turn would encourage them to use limited partnerships in other jurisdictions.

Thank you for the opportunity to comment and we would be very keen to discuss the contents of this letter further with you if that might be helpful. Please feel free to contact Ann Marie Plubell (plubella@empea.net) at EMPEA.

Yours sincerely,

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