

**BYRNE  
WALLACE**

LAW FIRM

## Review of Limited Partnerships Act 1907

# ByrneWallace Submission

6 March 2019

### Contact Us

Dublin

88 Harcourt St, Dublin 2, Ireland

Tel: +353 1 691 5000 Fax: +353 1 691 5010

Email: [info@byrnewallace.com](mailto:info@byrnewallace.com)

[www.byrnewallace.com](http://www.byrnewallace.com)

## **DBEI Review of Limited Partnerships Act 1907**

### **ByrneWallace Submission**

6 MARCH 2019

#### **Name of Firm:**

**ByrneWallace**  
88 Harcourt Street  
Dublin 2  
D02 DK18  
DX18 Dublin

#### **Contact Details:**

**Neil Keenan**  
Partner & Head of Corporate Department  
Tel: +353 1 691 5287  
Email: NKeenan@byrnewallace.com

#### **Interest in Subject Matter:**

As a firm, we advise many limited partnerships, act on corporate re-organisations and investment structures involving limited partnerships and provide advice in relation to limited partnerships to fund managers, private equity and venture capital firms, investors and family businesses. We regularly encounter the types of issues which are addressed in this Review in providing those advices to clients and dealing with their queries in relation to the regulation of limited partnerships in Ireland.

## DBEI Questions and BW Responses/Comments

### Question 1:

What are the benefits of limited partnerships for the Irish economy?

#### **BW Response/Comments:**

The Irish economy benefits from the Irish limited partnership structure (i.e., limited partnerships established under the Limited Partnerships Act, 1907 (the **1907 Act**)) primarily because it facilitates the significant number of investors whose business models and investment structures require a partnership structure and limited liability.

Other equivalent common law jurisdictions offer limited partnership models and indeed offer a range of different types of limited partnerships. For instance the UK offers either a limited partnership established under the 1907 Act (equivalent to the Irish limited partnership) or a limited liability partnership (LLP) introduced under the Limited Liability Partnerships Act, 2000, which differs from a 1907 Act limited partnership, in that it is a separate entity to its partners).

In Ireland, the limited partnership structure has proven to be an attractive investment vehicle for indigenous and foreign businesses, private equity and venture capital funds and promoters of regulated fund structures in a broad range of industry sectors, as well as for certain family business structures. It has been of particular importance to the venture capital industry and financial services sector/location of funds in Ireland over the past 8-10 years and is therefore of key significance to the continued growth of the Irish economy and the creation of employment opportunities in Ireland.

According to a report by the Irish Venture Capital Association in 2016 (the **IVCA Report**), in the previous 12 years, VC backed Irish companies created 20,046 high calibre jobs with a further 60,000 downstream jobs. In addition, the IVCA Report notes that expenditure on R&D by VC backed companies was €417 million between 2012 and 2016 and exports with a value of €1,523 million were generated.

### Question 2:

Given developments in the law governing business activity since 1907, is there a continued need for limited partnerships? Please set out any reasons or evidence for your opinion.

#### **BW Response/Comments:**

Please refer to our response to Question 1 above regarding the continued benefits of the limited partnership structure to the Irish economy in the context of this question also.

In our view, not only is there a continued need for the availability of limited partnerships in Ireland, but a very real need for modernisation of the legal framework which governs them and, for that reason, we welcome this consultation.

In our view, if Ireland fails to offer a modernised limited partnership model, it will be at a competitive disadvantage to other common law jurisdictions in terms of attracting investment to

venture capital, private equity and other funds, all of which fund businesses at various stages of their development.

**Question 3:**

Please set out your views on the possible reasons why there has been an increase in initial partnership registrations since the end of 2015.

**BW Response/Comments:**

**We note that the CRO's 2017 Annual Report (the most recent report publicly available) records that there were 302 limited partnerships on the register in 1997, 738 in 2007 and 2,278 in 2017. It also notes that 676 limited partnerships were registered in 2017 which is almost 5 times the number registered in 2015.**

We do not have sufficient information regarding the recent limited partnerships registered to provide a conclusive answer to the above question but, in our experience, many non-Irish organisations, including institutional investors such as insurance companies and pension funds, have started including Ireland in their considerations in recent years. In our view, this is likely to be the result of a combination of:-

- the improved reputation of Ireland as a well-regulated country from a tax and legal perspective, particularly since the global recession and as a stable jurisdiction politically;
- the targeted promotional work done, internationally, by Irish government agencies, Irish legal, tax and financial advisors in relation to Irish regulated funds and inward investment;
- the global move of funds over the past five years, particularly where the investors are based in the US, from "tax haven" countries;
- recent growth in the Irish and global economy and related increase in transactional activity; and
- increasing requirement for separate "ring-fenced" security vehicles for limited recourse financing/sub-fund structures.

**Question 4:**

Please set out your views on whether limited partnerships should be required to use the term "Limited Partnership" in the business name.

**BW Response/Comments:**

In our view, it would be preferable and consistent with the approach taken to companies, if limited partnerships were required to use the suffix "Limited Partnership" or "LP" in their registered name so that their status as a limited partnership was clear. We note that this was also the view taken by the UK Department of Business, Enterprise and Regulatory Reform following its

consultation on reform of UK limited partnership law in 2008<sup>1</sup>. We also believe that the requirement to register a business name should be removed and replaced with an optional entitlement to register a business name in the same way that applies to Irish companies.

If the above view is not accepted, then we do not believe that the requirement to use the term "Limited Partnership" in a business name should necessarily apply as it is inconsistent with the approach taken to the registration of business names generally for companies. If it is decided that this requirement shall apply, however,, then the abbreviation "LP" should also be acceptable.

There should be a requirement that the title of a limited partnership is distinguishable from a general partnership.

**Question 5:**

Please set out your views on whether limited partnerships should be required to maintain a principal place of business and a registered office in the State.

**BW Response/Comments:**

In our view, limited partnerships should be required to maintain a registered office in the State, but not a principal place of business, in the same way as Irish companies. The requirement to maintain a principal place of business in Ireland is likely to be impractical for/at odds with the business objectives of many limited partnerships (e.g. fund structures) and may act as a deterrent to investment/the use of limited partnership structures for this reason. Again this could put Ireland at a competitive disadvantage compared to other jurisdictions in attempting to attract investments by funds and other entities.

**Question 6:**

Please set out your views on whether limited partnerships should be required to make an annual return to the Registrar similar to obligations on companies.

**BW Response/Comments:**

The current position should be maintained.

Limited Partnerships are already required to make returns setting out relevant information and changes to that information. The necessity to make an annual return would appear to be an unnecessary compliance burden.

**Question 7:**

Please set out your views on how the annual return should be made and who should be responsible for making it.

<sup>1</sup> [http://www.legislation.gov.uk/ukxi/2009/1940/pdfs/ukxiem\\_20091940\\_en.pdf](http://www.legislation.gov.uk/ukxi/2009/1940/pdfs/ukxiem_20091940_en.pdf)

**BW Response/Comments:**

See response to Question 6 above. Where an annual return is required, we would recommend that this would be similar in form to that required to be filed by companies pursuant to the Companies Act, 2014 with context specific changes (e.g., replacing member details with partner details, requiring confirmation of status of each partner as general or limited, requiring capital details instead of share capital details etc). It would be prudent for any such annual return to be required to be signed by the general partner of a limited partner (or by a director/authorised signatory of the general partner where it was a corporate) given the prohibition on limited partners 'taking part in management of the partnership business' under Section 6 of the 1907 Act.

**Question 8:**

Please set out your views on whether all limited partnerships should be required to file financial statements.

**BW Response/Comments:**

The current position under Irish law, primarily Regulation 6 of the European Communities (Accounts) Regulations, 1993 (**Regulation 6**) requires limited partnerships which have general partners that are limited companies to file annual financial statements in the CRO (and for those accounts to be audited where the limited partnership is over a certain size) and, in our view, this requirement should be maintained. This is consistent with accounting requirements for companies under Irish company law and with EU Accounting Directives.

We note that Regulation 6 previously also applied to unlimited companies but was disapplied by the Companies (Accounting) Act, 2017 (**C(A)A17**) which transposed certain provisions of EU Directive 2013/34/EU (the **Directive**) into Irish law. While C(A)A17 did not address accounts filing requirements for limited partnerships, we note that, under the Directive, an equivalent approach is taken to accounts filing requirements for unlimited companies and limited partnerships. The general approach under the Directive can be briefly summarised as follows - in the same way as applies to an Irish unlimited company, if all of the '*direct or indirect*' members of an Irish limited partnership having otherwise unlimited liability in fact have limited liability by reason of those members being either EU or non-EU registered limited liability undertakings, then that limited partnership should be required to file annual financial statements in CRO.

We would expect the position taken under Irish law to be consistent with the position under the Directive (subject to any permitted exemptions which it may be decided to apply).

If there is a partner that does not have the benefit of limited liability (directly or indirectly), such as, for example, an individual, then, in our view, the current position, i.e., that there should not be an obligation to file financial statements of that limited partnership, should be maintained.

**Question 9:**

What are your views on giving the Registrar powers to remove and strike-off limited partnerships from the register?

**BW Response/Comments:**

In our view, there should not be an equivalent power for the Registrar to strike off a limited partnership as applies to a company. It is a more complex issue in the context of limited partnerships given that, unlike a company, a limited partnership is not a separate entity but comprises its partners so, if it is involuntarily removed from the register/struck off, then without legislative change to Irish partnership law, presumably it would revert to being a general partnership under the Partnership Act, 1890 but with its former limited partners losing their limited liability protection in respect of the debts of the limited partnership.

If a limited partnership has been dissolved, then the general partner (or any partner if the general partner does not do so within a specific period) should be entitled by law to notify the Registrar of such dissolution and the Registrar should be entitled to remove such limited partnership from the register if satisfied that it has received satisfactory evidence of dissolution.

In summary, while we can see an argument for the Registrar having power to remove a limited partnership from the Register in certain circumstances (for instance, following dissolution of the limited partnership or following continued failure by the limited partnership to submit required filings to the Registrar) and it would be in the public interest that the Register of Limited Partnerships be up-to-date, we believe that the potential implications of any such legislative change for its partners, particularly its limited partners, should be carefully considered. A more appropriate approach may be for the Courts to have a specific power to order the dissolution of a limited partnership in certain circumstances.

**Question 10:**

What factors do you think should be considered in removing or striking off limited partnerships from the register?

**BW Response/Comments:**

**Please refer to our response to Question 9 above in this context. In light of those comments, some relevant factors would include:**

- the impact of such removal/strike-off on (a) the general partner(s) and (b) the limited partners, particularly in respect of the potential for loss of limited liability protection on the part of the limited partners;
- the extent to which the limited partnership (and its partners) have been given sufficient advance notice to satisfy any conditions necessary to avoid such removal/strike-off - which, in our view, given the potential implications for limited partners, should be significantly longer than the periods applicable to companies. This would particularly apply where dissolution of the limited partnership was involuntary;
- the extent to which an application for reinstatement to the register should be possible

and the permissible grounds/level of evidence required for such reinstatement;

- the extent to which procedures similar to those which apply to companies are appropriate for limited partnerships and to what extent those procedures would need to be altered/tailored so as to effectively apply to limited partnerships? the extent to which it would be beneficial to (a) the general public; and (b) the partners in limited partnerships to have a mechanism in place for the dissolution/strike-off of limited partnerships (taking into account our comments above regarding the potential implications for partners);
- the extent of legislative change which would be required to clarify the status of a limited partnership/its partners following removal from the register/strike-off in circumstances where there had not been a dissolution of the partnership given that the limited partnership is not a legal entity so removal from the register/strike-off would not dissolve the relevant partnership at law.

The circumstances in which involuntary dissolution should take place and the consequences of this would need to be carefully considered. Reasonable parameters would need to apply (e.g. in the case of inactivity, an appropriate period of time would need to elapse before a limited partnership would be automatically struck-off by the Registrar.)

#### Question 11:

Please provide any other comments you wish to inform the development and direction of policy on limited partnership law.

#### **BW Response/Comments:**

##### **(1) Issue (participation in management of partnership):**

The meaning and parameters of a limited partner "*taking part in the management of the partnership business*" is not clearly set out or defined in the 1907 Act, but a limited partner who contravenes this provision will no longer have the benefit of limited liability and will be liable for all debts and obligation of the firm incurred during the period of his involvement as though he/she was a general partner. The vagueness of this restriction and the uncertainty among commentators as to its parameters means that a limited partner could have inadvertently lost his/its limited liability protection and be unaware of this.

#### **Recommendation:**

Given the serious consequences for limited partners brought about by a breach of this provision, we would suggest that it is important that there is increased legislative clarity with regard to what it means to "*take part in the management of a partnership business*" and that an appropriate

statutory definition or test should be introduced for this reason (even on a non-exhaustive basis).

We note that the Report on Reform of UK Limited Partnership Law published by the UK's Department for Business, Enterprise and Regulatory Reform (BERR) in August 2007<sup>2</sup> proposed the introduction of a list of permitted activities to further clarify what a limited partner could do without jeopardising limited liability. While the proposals in the BERR Report have not yet been implemented in the UK, they are instructive in the absence of any other legislative clarification.

**(2) Issue (date of registration of partnership/limited liability):**

It is currently open to interpretation under the 1907 Act as to whether a limited partnership is registered (and consequently enjoys the benefit of limited liability, assuming it is a de facto limited partnership) (a) at the point where the requisite forms LP1 and LP3 to register the limited partnership are filed in the CRO; or (b) when the Certificate of Limited Partnership is issued by the CRO.

**Recommendation:**

This position can create uncertainty for the partners in a limited partnership who want to commence trading by a particular date: the position should be clarified so that there is no ambiguity around this.

**(3) Issue (execution of documents including Deeds, by General Partner):**

The 1907 Act does not stipulate the form of words to be used by the directors of a General Partner when signing documentation for and on behalf of the limited partnership (e.g. signed by [Name of General Partner] for and on behalf of [Name of Limited Partnership], signed by [Name of General Partner] in its capacity as General Partner of [Name of Limited Partnership] **OR** whether it is necessary for the limited partnership to be mentioned/sufficient for a document, for example to be signed by [Name of General Partner] only. Commentators have differing views on this area.

Further, the 1907 Act does not incorporate any requirements as to execution formalities for Deeds. Section 64 of the Land and Conveyancing Law Reform Act 2009 (the "**Act**") abolishes the need for (i) a seal to be required for valid execution of a deed by an individual; and (ii) authority to deliver a deed having to be given by deed. It also provides for the use of specific execution blocks for execution of deeds by individuals and 'bodies corporate.' 'bodies corporate' is not defined in the Act, but excludes partnerships (which are unincorporated bodies). The formalities for execution of a deed by a partnership, will therefore depend upon (i) the rules applicable to that Partnership (for example, execution by one/more of the Partners) (***as to who can sign***); and (ii) the ***legal personality*** of the person executing the contract (***as to how the contract is signed***);

<sup>2</sup> <http://webarchive.nationalarchives.gov.uk/20090609032351/http://www.berr.gov.uk/files/file47577.pdf>

**Recommendation:**

Given the prescriptive nature of the legislation applicable to the execution of deeds and execution formalities in general applying to companies and other incorporated bodies, some thought should be given to specifying/standardising the document execution formalities for limited partnerships (as represented by their General Partners).

**(4) Issue (loss of limited liability for minor errors)**

As it stands, even a minor or inadvertent error in the LP1 application form to register a limited partnership can result in the limited partnership being deemed an ordinary partnership, with loss of limited liability for the limited partners.

**Recommendation:**

The strict interpretation and application of Section 5 of the 1907 Act approach can have draconian consequences for limited partners. Measures should be introduced so that late filings do not result in loss of limited liability or alternatively, to allow the limited partnership, for example, a certain period of time to rectify typographical or other minor error(s) without losing limited liability status

As a further general comment, the circumstances in which limited liability is lost should be reviewed and an element of reasonableness/rectification period built in where appropriate.

**(5) Issue (limit on number of partners)**

The limitation on the number of partners in a limited partnership of 20 (or in certain limited cases 50) can be overly restrictive for certain groups of investors proposing to have in excess of this number of partners.

**Recommendation:**

Thought should be given as to whether this limit can be removed/increased or if not, whether the categories of limited partnership which can be comprised up to 50 members can be expanded. We would recommend that the position in the UK, where the upper limit on the number of partners has been removed,<sup>3</sup> be followed in Ireland.

**(6) A separate category of Limited Liability Partnerships should be introduced**

A form of limited liability partnership which would be treated as a separate entity but would be transparent for tax purposes and where all of the partners may have limited liability and may participate in the management of the business should be introduced. This will offer an additional business structure for investors, funds and other types of businesses and will allow Ireland to be competitive in terms of inward investment as against other jurisdictions which offer such a

---

<sup>3</sup> Article 2 of the Regulatory Reform (Removal of 20 Member Limit in Partnerships) Order 2002/3203.

structure.

**(7) Scope of reform of the law on Limited Partnerships**

As a general comment, we note that Irish partnership law is out of date and anachronistic and that the 1907 Act governing Irish limited partnerships is inadequate and, in many respects, raises more questions than answers. Nor does it interact smoothly with other legislation applicable to limited partnerships, primarily the Partnership Act, 1890 but also the Companies Act, 2014 in some regards. Accordingly, we believe that, if amendments to the law governing limited partnerships are envisaged, the opportunity should be taken to repeal the 1907 Act in its entirety and replace it with more modern and fit-for-purpose legislation.