



October 5, 2015

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Sent via e-mail to: lp.consultation@hmtreasury.gsi.gov.uk

Re: Response to HM Treasury's Proposal to change partnership legislation for private equity investments (July 2015)

Dear Sir or Madam:

The Private Equity Growth Capital Council (the "PEGCC") appreciates the opportunity to comment on HM Treasury's Proposal to change partnership legislation for private equity investments. The PEGCC is an advocacy, communications and research organization established to develop, analyze and distribute information about the private equity and growth capital investment industry and its contributions to the national and global economy. Established in 2007, and formerly known as the Private Equity Council, the PEGCC is based in Washington, D.C. The PEGCC's members represent a broad cross-section of the private equity industry in the United States, and include many of the world's largest and best known private equity firms, as well as leading small and medium-sized private equity firms.¹ The PEGCC's members are united by their commitment to growing and strengthening the businesses in which they invest. Many of our members invest in Europe and market their funds to professional investors in Europe. For further information about the PEGCC, please see www.pegcc.org.

I. The PEGCC strongly supports the proposed reforms and believes that they will ensure the continued commercial viability of English and Scottish limited partnerships as private fund vehicles and, thereby, will improve the competitiveness of the United Kingdom as a jurisdiction of choice for (U.K. and foreign) private fund sponsors.

A significant number of our members use English and Scottish limited partnerships. It is common for U.S. (as well as other foreign) private fund sponsors to structure private funds as English or Scottish limited partnerships, particularly when targeting prospective investors in the United Kingdom or elsewhere in Europe.

We have not responded to all questions asked in the consultation, just those that address issues that most concern our members.

¹ For a list of our members, please see www.pegcc.org/membership/members.

In addition, we have reviewed the response prepared by the British Private Equity and Venture Capital Association. We support and second that response in its entirety.

II. Process for designating private fund limited partnerships (Q1)

We would like to see the introduction of a designation process that is as simple as possible, avoiding unnecessary complexity and burden for private fund sponsors.

With that in mind, we consider that it would be preferable:

- Not to have to obtain a certificate from a solicitor when requesting designation as a private fund limited partnership as that likely would impose significant additional administrative burden and consequential cost on private fund sponsors (quite aside from whether it would be possible to obtain such a certificate in all relevant circumstances); and
- To be able to request designation as a private fund limited partnership (whether existing or not when the legislative reform order is enacted) at any time so long as the private fund conditions are satisfied when the request is made.

III. White list (Q3, Q4)

We note that unlike in other common fund domiciles (*e.g.*, the State of Delaware and the Cayman Islands), the United Kingdom currently does not have a white list of activities that a limited partner may undertake without jeopardizing its limited liability, and so there is more uncertainty around what activities a limited partner in an English or Scottish limited partnership may undertake relative to the position in other common fund domiciles. A limited partner in a private fund will expect that its liability with respect to such private fund, so far as possible, is limited to the amount of its contractual commitment thereto. Anything that may jeopardize that will be of considerable concern to the limited partner and may result in the limited partner refusing to invest.

We welcome very much the inclusion of a white list, and we agree with the activities on the white list. The activities are those that a limited partner in a private fund typically will undertake in monitoring and assessing the private fund. However, we think that the white list should be expressed to be non-exhaustive, so as to avoid any adverse presumption with respect to any activity that is not on the white list.

IV. Capital contributions (Q5, Q6, Q7)

A limited partner in a private fund formed as a limited partnership in a common fund domicile other than the United Kingdom will fund its contractual commitment to the private fund by way of capital contributions over the life of the private fund as and when required by the private fund. It is only where a private fund is formed as an English or Scottish limited partnership that (i) a limited partner, without exception, must make a capital contribution on the date of its admission to the private fund and (ii) a limited partner's contractual commitment to the private fund will be funded partly by way of interest-free advances. Accordingly, we agree with the proposed changes as they will bring U.K. limited partnership law into line with limited partnership law in

other common fund domiciles. That will minimize the need to structure a private fund formed as an English or Scottish limited partnership any differently to how a private fund formed in any other common fund domicile is structured, which may make it easier to market a private fund formed as an English or Scottish limited partnership to investors.

V. Registration and notice requirements (Q9, Q10, Q11)

We agree with the proposed removal of the requirements *(i)* to register the amount of capital, the general nature of the limited partnership's business and the term of the limited partnership and *(ii)* to advertise a notice of certain changes in the Gazette. The proposed changes will reduce the administrative burden on private fund sponsors, which burden we believe is not justified given the limited benefit that is derived by partners and third parties from compliance with those requirements.

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The PEGCC appreciates HM Treasury's consideration of this letter and is available to discuss any questions that HM Treasury may have.

Respectfully submitted,



Jason Mulvihill
General Counsel
Private Equity Growth Capital Council