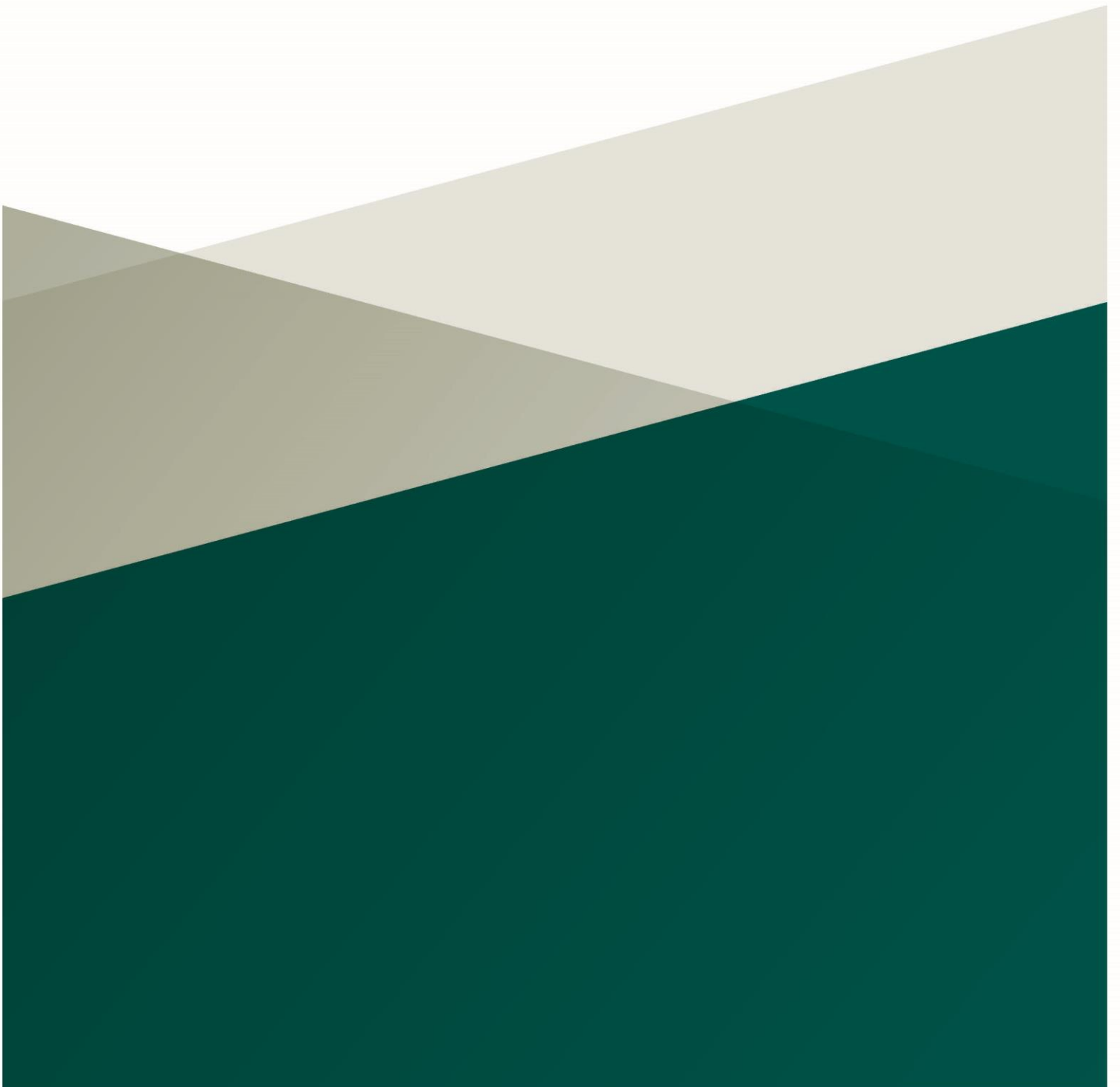




An Roinn Gnó,
Fiontar agus Nuálaíochta
Department of Business,
Enterprise and Innovation

Review of Limited Partnerships Act 1907



Review of Limited Partnerships Act 1907

Background

The Department of Business, Enterprise and Innovation is seeking views on the Limited Partnerships Act 1907. This is part of its ongoing policy agenda ‘to review and enhance Ireland’s regulation and enforcement regime to ensure that we maintain our world class business environment underpinned by appropriate regulation and legislation.’¹

Limited partnerships have been an option for Irish businesses since their introduction in the Limited Partnerships Act 1907². Overall their use was characterised by a steady but relatively very small stream of annual registrations compared to company registrations.

At the end of 2015 there were around 1,100 limited partnerships listed on the register at the Companies Registration Office (CRO). Since then the number has increased to over 2,500. This compares to over 200,000 companies on the register of companies.

It is considered timely to review the 1907 Act given the significant developments in laws governing business activity since its enactment and the recent increase in registrations. Views are being sought on a range of proposals.

General provisions of the Limited Partnerships Act 1907

The principal legislation dealing with partnerships in Ireland is the Partnership Act 1890. A partnership is defined in the 1890 Act as “the relation which subsists between persons carrying on business in common with a view to profit.” Unless another legal form is established, partnership is the default form of the legal relationship between two or more persons who carry on business together.

The consequences of entering into a partnership is that each partner is jointly liable for the debts and obligations of the partnership and for any loss or injury caused to any third party by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership. Unlike companies, partnerships do not have a separate legal personality.

The Limited Partnerships Act 1907 came into effect on 1 January 1908. Its purpose is to allow for partnerships where some members may have limited liability.

¹ <https://dbei.gov.ie/en/Publications/Publication-files/Statement-of-Strategy-2018-2021.pdf> pp16

² <http://www.irishstatutebook.ie/eli/1907/act/24/enacted/en/print.html>

A limited partnership may have up to 20 partners with some exceptions³. There must be at least one general partner with unlimited liability. The general partner may be an individual or a company. A limited partner may be an individual or a company. Limited partners must make a capital contribution to the partnership and their liability is limited up to that amount. Limited partners may not be a part of the management of the firm and if they do so they are liable as if a general partner. A limited partnership does not have a separate legal personality.

Limited partnerships are tax transparent; that is the partnership is not taxable. Limited partnerships are generally not required to file accounts.

The limited partnerships listed on the register carry out a range of activities including property investment, film making, fund management, aviation and general and wholesale trading. A limited partnership can be simple with a small number of partners or one element of a multi-layered structure.

Question 1.

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

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.

Applications for registration of limited partnerships

Limited partnerships must be registered with the Registrar of Companies in accordance with the 1907 Act. The list of registered limited partnerships is publicly available on the CRO website⁴. As set out earlier, there are over 2,500 limited partnerships listed on the register.

There are additional requirements as part of the registration process where the general partner is a non-EEA national and where the general partner or limited partner is a company which is not registered on the Irish register of companies⁵. The business name of the limited partnership should also be registered in accordance with the Business Names Act 1963.

Changes in registration details should be notified to the Registrar within seven days including changes in firm name, general nature of business, principal place of business and the name of any partner. Failure to do so is subject to a fine on summary conviction under

³ See Section 1435 of the Companies Act 2014

⁴ <https://www.cro.ie/Registration/Limited-Partnership>

⁵ <https://www.cro.ie/Portals/0/Leaflets/Leaflet%206%20v3%202014%20Act.pdf>

the Act. It is an offence under the Act to make a false statement for the purposes of registration of a limited partnership.

A limited partnership being deemed a general partnership is another consequence of failure to adhere to the rules on registration.

Question 3.

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

Question 4.

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

The principal place of business

Under the Companies Act 2014, companies are required to maintain at all times a registered office in the State. This is an address to which all communications and notices may be addressed. Companies must submit an annual return to the CRO containing, inter alia, details of the registered office.

The 1907 Act requires that, amongst other things, the register shows the principal place of business for the limited partnership. As set out earlier, there is also a requirement on the limited partnership to inform the Registrar of changes to the details of the partnership including the place of business on the register within seven days.

However, there is no requirement under the Act to make an annual return to the Registrar nor is a limited partnership required to have a registered office in the State.

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.

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.

Question 7.

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

Filing financial accounts

In general, limited partnerships are not required to file accounts except where the general partner is a limited company. In this case limited partnerships must file accounts for the partnership with the CRO (S.I. 396 of 1993⁶). Depending on the size of the limited partnership, accounts are required to be audited.

Limited companies must file financial statements annually under the Companies Act 2014. Filing of financial statements annually is a central tenet of transparency. Failure to adhere to the rule results in the application of late filing fees and the possibility of prosecution or strike-off the company.

Question 8.

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

Removing limited partnerships from the register

Where a limited partnership is dissolved it should be wound up by the general partners. However, there are no provisions in the 1907 Act for the Registrar to enquire about whether a limited partnership is active or to remove limited partnerships from the register, whether through inactivity, enforcement action or dissolution. Under the Companies Act 2014, the Registrar has a range of powers to remove and strike-off companies from the companies register, voluntarily and involuntarily. The consequences of involuntary strike-off are significant and include -

- the assets of the company become the property of the State on dissolution of the company;
- it ceases to exist as a legal entity as and from the date on which notice of its strike-off is published in the CRO Gazette;
- the protection of limited liability is lost with effect from that date.

Question 9.

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

Question 10.

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

⁶ <http://www.irishstatutebook.ie/eli/1993/si/396/made/en/print>

Question 11.

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

THANK YOU FOR YOUR RESPONSES

Deadline for Submissions

The deadline for submissions or comments on this review is **Friday, 1st March 2019**.

Submissions should be sent to: orla.obrien@dbei.gov.ie

Postal address: Orla O'Brien
Company Law: Accounting and Audit Policy
Department of Business, Enterprise and Innovation
Earlsfort Centre, Lower Hatch St
Dublin 2 D02 PW01

When making your submission please provide the name of the individual, firm or organisation making the submission; contact details and briefly describe your interest in this subject matter.

Freedom of Information Act 2014 and Publication of Submissions

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

General Data Protection Regulation

Respondents should note that the General Data Protection Regulation ('GDPR') entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose Limitation;
- Data minimisation;
- Accuracy;
- Storage Limitation;
- Integrity and confidentiality, and
- Accountability.

The Department of Business, Enterprise and Innovation is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

JANUARY 2019