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

Review of Limited Partnerships Act 1907

Dear Ms. O'Brien,

Deloitte Ireland LLP ("Deloitte") welcomes the opportunity to provide its views on the questions raised by the Department of Business, Enterprise and Innovation ("DBEI") as part of its review of the Limited Partnerships Act 1907 (the "Act").

We have set out below the questions raised by DBEI, and Deloitte's responses to those questions. As a general point, we would like to take this opportunity to call for a wider review of the potential for and role of the limited partnership in Ireland. According to DBEI, the number of limited partnerships in Ireland has more than doubled since 2015, to over 2,500. However, Deloitte is of the view that the proportion of limited partnerships compared to limited companies in Ireland (just over 1%) is indicative of a need to overhaul the limited partnership structure in Ireland if the model is to be more widely adopted by the business community.

We have responded to DBEI's questions on the basis that consideration should be given to the merits of introducing the modern limited liability partnership ("LLP") structure which has been introduced in other common law jurisdictions, as well as in other EU Member States. A new LLP structure could potentially be availed of by those enterprises currently structured using the limited partnership model under the Act, while also facilitating Irish businesses (and foreign direct investment) in using a modern, flexible partnership structure through which to trade, similar to that available in most common law jurisdictions and many EU Member States.

Question 1 – What are the benefits of limited partnerships for the Irish economy?

We understand that limited partnerships, introduced in Ireland following the entry into legislation of the Act, are most commonly used by the investment fund, private equity, and venture capital sectors. A key differentiator of a limited partnership compared to an Irish general partnership established under the Partnership Act 1890 is that the liability of certain partners in a limited partnership is limited to the amount they contribute to the capital of the limited partnership. The liability of one or more "general partners", who are responsible for the day-to-day management of the business of the limited partnership, is unlimited – similar to a partner in a general partnership under the 1890 Act.

The benefits of limited partnerships to the Irish economy under the current legislative framework, primarily the Act, are to allow "passive" investors in financial vehicles to invest funds, and thereby take a degree of risk, but to have certainty as to the limit of their financial exposure in the event that the limited partnership fails.

In Deloitte's view, the potential benefits for the Irish economy stemming from amending the Act to provide for an equivalent to the modern LLP structure available in other common law and EU jurisdictions include:

- Facilitating all-island trade in the event of a 'hard Brexit';
- Potential to incentivise international professional services firms, including leading UK legal and accounting firms, to establish their headquarters in Ireland. We are aware of several such firms that

have established, or are contemplating, establishing their global headquarters in other EU states as part of their Brexit planning;

- The creation of a level playing field for Irish professional services firms when competing on the global stage with their counterparts in other developed economies, including across the European Union;
- The strengthening and reinforcement of the international view of Ireland as being a modern, flexible, responsive, business and employment-friendly economy in which to operate; and
- The further strengthening of Ireland's leading status as the location of choice for non-EU global businesses seeking access to the EU market.

The potential negative impacts of not taking this opportunity to examine the potential to introduce LLPs include:

- The risk of some professional services firms ceasing to operate in the Irish market, leading to reduced competition in professional services in Ireland, to the potential detriment of indigenous and multinational businesses. This is particularly critical for an economy given the systemic importance of professional services such as accounting and auditing services;
- Potentially significant disruption to all-island trade and services provision after the UK ceases to be a member of the EU;
- The loss of employment and trade benefits associated with major global professional services firms opting not to relocate to Ireland from the UK post-Brexit, and non-EU global professional services firms electing not to use Ireland as their preferred location for access to EU markets; and
- The risk of the creation of a view among the global business community that the Irish legislative framework and public sector may be unable to respond sufficiently quickly to changes in the way global businesses structure their operations.

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.

It has long been public policy that entrepreneurs, investors and business people should be able to avail of a limitation on personal liability when conducting business. More recently, many developed economies have recognised that given the increased scale, sophistication and global reach of professional services providers such as accountants, auditors, solicitors, engineers, architects and consultants, and the fact that these entities are significant employers and contributors to economic activity, the owners and operators of such businesses should be able to avail of the same limitations against personal liability as shareholders and directors of limited companies.

The UK introduced the LLP structure in 2000, with other common law and EU jurisdictions having subsequently introduced equivalent structures. Since 2000, virtually all sizable UK professional services firms, including all of the major international audit and accounting firms operating in the UK, have converted to LLP status. The LLP structure is now one of the most common legal entity structures used in the provision of cross-border audit services in the EU. Similarly, the LLP structure is the de facto operating model for professional services firms and financial partnerships operating in the United States, Canada, and Australia, and in several EU countries.

While professional services firms using a partnership model could in theory move to a form of limited liability company (either a company limited by shares or a designated activity company), the partnership-based model central to the provision of professional services is unique in today's business environment, and would not be possible under existing company law structures. Deloitte submits that the LLP structure adopted across much of the common law world is better suited to the unique culture and operating model of professional services providers. We have set out below some key points in respect of LLPs, which we submit should be considered when reviewing the Act as part of the current consultation process.

LLPs are a hybrid of a general partnership and a limited liability company. The UK LLP structure reflects partnership management structures, and is treated by tax authorities as being transparent for income tax purposes. The personal liability of the members (also known as partners) of an LLP is limited, similar to the personal liability position of shareholders in a limited liability company.

The key aspects of an LLP which make it different to a limited liability company (either CLS or DAC) include:

- The admission and retirement of partners does not require sale or disposal of securities;
- The number of partners is scalable;
- Facilitation of multi-disciplinary partnerships;
- Tax transparency in respect of partner earnings;
- The personal liability of partners is limited, similar to that of shareholders in limited companies; and
- Sharing profits is not solely governed by ownership percentages in the LLP but is flexible within the terms of the LLP's partnership agreement.

The above characteristics enable an LLP to retain the unique culture and management style of a partnership, such as preservation of collective partner responsibility in a professional services environment (an important public policy consideration given the critical role professional services providers play in the economy), which leads to collegiate, consensus driven decision-making. The LLP structure also tends to encourage a culture of long-term planning, as LLPs are not tradeable and cannot be sold by the partners. The LLP structure also enables financial services entities with multiple investors to operate effectively.

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.

Deloitte understands that the limited partnership provided for in the Act is used primarily by groups of investors, and as vehicles to house investment funds. It is likely therefore that the increase in limited partnership registrations since the end of 2015 reflects (a) the recovery of the Irish property market, resulting in an increase in the number of property investment partnerships engaging in development activity since the recession; and (b) the continued global success of the Irish investment funds industry.

Question 4 – Please set out your views on whether limited partnerships should be required to use the term "Limited Partnership" in the business name.

Deloitte believes that limited partnerships should be required to use the term "Limited Partnership" in the business name. This is consistent with the requirements applicable to all other forms of business entity currently used in Ireland, and allows persons interacting with a limited partnership to know what legal form is being used.

Question 5 – Please set out your views on whether limited partnership should be required to maintain a principal place of business and a registered office in the State.

Deloitte believes that limited partnerships should be treated in a manner similar to other business structures such as limited companies, and that they should be required to maintain a principal place of business and registered office in the State, and that this should be recorded by the Registrar of Companies.

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.

Deloitte believes that limited partnerships in Ireland should be treated in the same manner as LLPs in jurisdictions with similar legal systems such as the UK. LLPs in the UK are required to file an annual return known as a "Confirmation Statement". This sets out relevant information, including financial information, applicable to the LLP in the preceding year – effectively, equivalent to a limited company's annual return.

Question 7 – Please set out your views on how the annual return should be made and who should be responsible for making it.

Deloitte submits that the current requirement for an annual Confirmation Statement to be filed at Companies House by UK LLPs represents a good example of how an annual return by an Irish limited partnership should be made. The Registrar of Companies is the logical body with which limited partnerships in Ireland should file annual returns. Within the UK LLP structure, there is a requirement for not less than two "Designated Members", who are partners within the LLP charged with additional responsibility under law for ensuring that

required Companies House filings are made correctly and on time. Such individuals face sanction in the event that they fail to ensure compliance by the LLP with the filing requirements applicable to LLPs from time to time. In the case of limited partnership under the Act, we submit that the general partner(s), as the person(s) responsible for the management of the limited partnership, should have that responsibility.

Question 8 – Please set out your views on whether all limited partnerships should be required to file financial statements.

We submit that limited partnerships in Ireland should be treated in a similar manner to limited liability companies where the general partner is itself an entity which benefits from limited liability, and that in such case a limited partnership should (as is currently the case) be required to file financial statements. In the event that the legislature saw fit to introduce an LLP-type entity in Ireland, we submit that it should be a requirement for LLPs to file accounts. It is submitted that, in such case, it would perhaps be appropriate to draw a distinction between large professional services partnerships, and smaller partnerships with partner numbers in the single digits (for example). LLPs in the UK are required to file audited financial statements annually as an addendum to their annual Confirmation Statement discussed above.

Question 9 – What are your views on giving the Registrar powers to remove and strike-off limited partnerships from the Register?

We submit that the Registrar should have the ability to use all sanctions currently available to it in respect of limited companies when regulating limited partnerships, up to and including the power 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?

Deloitte submits that similar criteria should apply to limited partnerships as currently apply to limited companies when removing or striking-off a limited partnership from the Register.

Question 11 – Please provide any other comments you wish to inform the development and direction of policy on limited partnership law.

Having successfully modernised company law in Ireland with the introduction of the Companies Act 2014, Ireland now has an opportunity to radically modernise the operation and potential of the partnership model if appropriate updates are made, including to the Act. It is submitted that key to this modernisation would be the introduction of a limited liability partnership structure similar to the LLP structures available in the UK, US, Canada, and Australia, and in other EU Member States.

Conclusion

While it is unlikely that the legislature at the time of the Act could have anticipated the size and complexity of modern professional services firms in the twenty first century, we submit that this review and consultation process in respect of the Act represents an opportunity for DBEI to consider the wider question of the introduction of LLPs along the lines of those used in the UK and other EU Member States.

Modernising partnership law in Ireland by providing for an Irish-law equivalent to the LLP structures ubiquitous to professional services sectors in other common law jurisdictions would signal to international professional services firms and financial investment businesses that Ireland is responsive to the needs of local and international business, by being willing to make updates to its legislation to help ensure that the Irish economy remains competitive in an increasingly globalised world by being adaptive, flexible, and business friendly, which simultaneously imposing a rigorous reporting regime on businesses availing themselves of the LLP structure.

Taking the opportunity presented by this consultation process to consider the introduction of a new limited liability partnership structure would demonstrate that Ireland is aware of developments in our largest and most important trading partners and competitors, and willing to amend historical legislation in a manner to ensure the ongoing competitiveness of the Irish economy and its businesses.

We would welcome the opportunity to discuss in further detail with you any of our responses above.

Yours sincerely

A handwritten signature in black ink, appearing to be a stylized name, possibly 'C. O. O.', written in a cursive style.

Deloitte Ireland LLP