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The Partnership Bill 2003: unnecessary tinkering or much-needed reform?

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***J.B.L. 70 Introduction**

Those who have followed the progress of the Law Commissions' *Joint Consultation Paper on Partnership Law* ("the GP Consultation Paper")¹ and *Limited Partnerships Act 1907: a Joint Consultation Paper* ("the LP Consultation Paper")² will find few surprises in the draft Partnership Bill published in their Partnership Law Report ("the Report").³ The most radical proposal, the introduction of separate legal personality, is included; and there are few new measures, the introduction of the special limited partnership being a notable exception. The purpose of this article is to analyse the changes to partnership law which will be brought about if the draft Bill is adopted in its current form, and to discuss the merits or otherwise of these changes.

Legislative consolidation

The current law of partnership is contained in the Partnership Act 1890 and the Limited Partnerships Act 1907. The former applies to all partnerships, while the latter applies only to limited partnerships and, *inter alia*, modifies the application of the former to them. The Bill would replace both Acts with a single statute, with the advantage that intending and actual members of a limited partnership need no longer refer to two pieces of legislation, pieces which, moreover, are not in perfect harmony.

***J.B.L. 71 Default rules**

Clause 5 of the Bill provides that certain of its provisions constitute default provisions, which apply as terms of the partnership agreement unless modified or excluded by that agreement or by agreement of all partners. Although both the 1890 and 1907 Acts include default rules, they are not expressly identified as such, and cl.5 is therefore to be welcomed. However, it is submitted that a model agreement based on the default rules and annexed to the Act would have been useful⁴ and the wording of cl.5 could be improved; it is unnecessary to define default rules as rules which apply unless dealt with in the partnership agreement, and to provide that they may be modified or excluded in accordance with the agreement, and to provide that all partners may agree otherwise. Only one such statement is necessary. Indeed, since cl.5 states that default rules are to be treated as terms of the partnership agreement, and cl.4 provides that the agreement may be amended in the manner provided for in it or by the partners unanimously, it is not strictly necessary for cl.5 to state how contrary agreement may be reached.

Transitional provisions

Clause 79 of the Bill provides that the Bill will not apply to existing general or limited partnerships. However, the Secretary of State may make regulations for it to apply to such partnerships after a transitional period of two years and/or to permit them to elect to be subject to its provisions during that transitional period. The Secretary of State may also make provision for existing partnerships, which by virtue of a change in membership would otherwise come to an end within the transitional period, to be treated as not having come to an end, and for any rules in the 1890 or 1907 Acts to be treated as default provisions for such partnerships. If provision is not so made, partnerships which rely on the current default rules and experience a change in membership during the transitional period will be treated as new partnerships and thus subject to the Bill.

Definition ⁵

Clause 1(2) of the Bill defines a partnership as “an association formed when two or more persons start to carry on business together under a partnership agreement” and cl.1(1) defines the agreement as “an agreement between two more persons for carrying on business together with the objective of making a profit”, with the result that the opening provision of the Bill defines a partnership agreement rather than a partnership. It is submitted that, in the interests of clarity, the explanation of what a partnership is should take prime position, with the definition of an agreement second.

Clause 6(1) provides that “‘business’ includes every trade, profession and occupation”. Thus the key elements of the present definition---two or more ***J.B.L. 72** persons, acting together and intending to make a profit⁶ ---are preserved, as is the definition of a business.⁷ The existing provisions setting out activities which do not constitute a partnership⁸ are also restated by Sch.1 to the Bill. However, it is submitted that despite the Law Commissions' assertion that the existing definition of business includes investment business,⁹ the paramount importance of investment activities to limited partnerships makes its express inclusion advisable. The Law Commissions have not adopted their original proposal¹⁰ that the partnership rather than the partners should carry on business. They accept that this could endanger the tax transparency of partnerships and the recognition that partners are agents of the partnership rather than vice versa.¹¹

The Bill makes a number of minor changes. The requirement of an agreement (which need not be in writing),¹² and the statement that a partnership is formed when the persons start to carry on business, make express what was previously implicit.¹³ The more modern term “association” replaces “relation”, although the Law Commissions' argument that this more accurately explains what the partnership entity is¹⁴ must be doubted.

Legal personality ¹⁵

Clauses 1(3) and (4) of the Bill provide that partnerships, other than special limited partnerships, have legal personality.¹⁶ As explained above, this will only apply to partnerships formed after the Bill comes into force, subject to the making of transitional provisions governing existing partnerships. The exception for special limited partnerships effectively allows a limited partnership to opt out of separate legal personality and is discussed further below.

Clauses 7 and 8 provide that a partnership has unlimited capacity, except that it cannot employ a partner or, in the absence of specific statutory provision, commit a criminal offence. The former provision avoids the application of employment law to the partnership-partner relation, while the Law Commissions explain that the latter clarifies the law and that there “may” be a separate review of the application of criminal law to partnerships “in due course”.¹⁷

***J.B.L. 73** The introduction of separate legal personality has a number of consequences. First, it enables the partnership itself to continue on a change of partners, subject to contrary agreement. This requires the statutory provisions on dissolution to be supplemented to deal with the financial consequences of a partner leaving a continuing partnership (see below). At present, continuity requires prior agreement, at which stage financial matters can be settled. Secondly, the partnership can contract in its own name and own land and other property, and therefore provision needs to be made for it to execute deeds (see below). Third, cl.6(3) provides that partners are now agents only of the partnership, rather than also of each other as at present.¹⁸ The Law Commissions considered that the continued application of the principle of mutual agency would be inconsistent with separate personality, since it is the partnership which carries on business, but it is submitted that retaining mutual agency would more clearly reflect the joint and several liability of the partners. Finally, while separate legal personality could enable partnerships to grant floating charges, the Law Commissions have decided to deal with this issue in the context of a wider reform of floating charges.¹⁹

Execution of deeds ²⁰

The introduction of separate legal personality necessitates the introduction of new rules on the execution of deeds by the partnership, and also provides an opportunity to reform the rules on the execution of deeds by partners. Clauses 20(1) and (2) of the Bill provide that, subject to certain exceptions, a document is validly executed by the partnership as a deed if it is signed by two partners with authority to execute it as a deed on behalf of the partnership, is expressed to be executed by the partnership, and is delivered as a deed. Clause 20(7) provides that, in favour of a purchaser, it is

sufficient if the deed is signed by two or more persons purporting to be partners. These provisions are workable both for the partners and for third parties, and broadly reflect the provisions applicable to companies.²¹ However, the Explanatory Note²² is misleading as it states that currently all partners have to execute the deed or be present at its execution, whereas a partner could in fact be authorised to enter into a deed on behalf of the other partners, and indeed a maximum of four partners only can sign a transfer of land.²³

***J.B.L. 74** Clause 20(4) provides that if a partnership being wound up has only one partner, the signature of that partner is sufficient, regardless of whether he has authority. Clause 20(5) provides that if a limited partnership has only one general partner, his signature is sufficient so long as he is authorised to execute the document as a deed on behalf of the partnership. These apparently curious provisions, envisaging a partnership of one partner, take account of the Bill's provisions (see below) for a partnership to exist until winding up is complete instead of ceasing to exist prior to winding up.

Partnership property²⁴

A further reform enabled by the introduction of separate legal personality is the simplification of the definition of partnership property; from property brought into the partnership stock, acquired on account of the firm, acquired for the purposes and in the course of the business, or bought with partnership money²⁵; to property to which the partnership is beneficially entitled.²⁶ However, it is submitted that the latter is little clearer and that there are likely to be disputes as to the existence of such entitlement.

Partners' duties²⁷

Duty of good faith

Clause 9 of the Bill puts on a statutory footing the common law duty of good faith owed by all partners to each other and the partnership,²⁸ and retains with updated wording the three specific examples of this duty previously contained in ss.28--30 of the 1890 Act. It is submitted that these amendments make the existing law more transparent and are therefore to be welcomed. In the light of opposition from consultees,²⁹ the Law Commissions have not included the duty on partners to act with reasonable skill and care which they proposed in the GP Consultation Paper.³⁰ They have also accepted that their proposal³¹ that some duties should be owed to the partnership and some to the partners is unduly complex.³² Instead, cl.9(1) provides that all duties arising out of the duty of good faith are owed both to the partnership and to the other partners.

J.B.L. 75 *Disclosure to partners

Clause 10 of the Bill, which was not originally proposed by the Law Commissions in either Consultation Paper, provides that when a partnership is formed, or a new partner joins, the prospective partners and/or partners must disclose "anything known to [him/them] which a prudent [prospective partner/partner] would reasonably expect to be disclosed". This extends the current disclosure element³³ of the duty of good faith to, and in favour of, potential partners, and reinforces the mutual good faith on which partnerships are founded.

Disclosure to persons dealing with the partnership³⁴

Clause 74 of the Bill clarifies the law by stating that a person dealing with the partnership is entitled on request to be supplied with the name and address for service of all partners and, in the event of a complaint relating to past dealings, of former partners. At present, similar provisions apply by virtue of the Business Names Act 1985 (which requires the names and addresses for service of all partners to be disclosed on all partnership documents or on request) if the partnership name does not incorporate the names of all partners, and Sch.1 to the CPR (which re-enacts RSC Ord.81 and provides that the details of former partners must be provided in the event of a claim relating to a time when they were partners). Clause 74 also makes the obligations contained in it legally enforceable by the person requiring the information,³⁵ which could prove useful in the minority of cases where information is not forthcoming.

Partnership finances³⁶

The default rules on partnership finances in cl.11-12 of the Bill largely restate the existing law, but there are a number of amendments.³⁷ First, although cl.11 provides that profits and losses are to be shared equally by the partners, the restriction to “income” profits and losses in s.24 of the 1890 Act is removed, reflecting the ruling in *Popat v Shonchhatra*³⁸ that capital profits and losses are also included. It is submitted that there should also be a cross reference to cl.56, which provides that limited partners have limited liability for losses. Secondly, as the Bill now provides for dissolution after rather than before winding-up (see **J.B.L. 76* below), there is no longer a separate provision for profits accruing after dissolution.³⁹

Thirdly, while the provisions in cl.12 on contributions and indemnities make no substantial change to the existing law, they attempt to deal explicitly with all aspects of the right to an indemnity. Clause 12(3) provides that partners are entitled to an indemnity from the partnership for payments made in the proper conduct of the partnership business or to discharge personal liability for a partnership obligation. Clause 12(4) provides that the right to an indemnity does not affect any liability that a partner may have to the partnership or a partner in respect of wrongdoing. Clause 12(5) provides that if the partnership does not pay the indemnity, the partner is entitled to a contribution from the other liable partners (defined in cl.12(6)) in the proportions that they would bear losses, and cl.12(7) of the Bill makes similar provision where the partnership fails to pay a partner other amounts owed to him. The result is a clumsily structured and worded clause which is likely to cause confusion, particularly as to its provisions on which partners are liable to contribute (cl.12(6)) and how much (cl.12(5)).

Fourthly, partners are no longer to share equally in capital subject to contrary agreement. Instead, cl.13, which contains default rules, provides that contributions and variations of capital must be agreed by all partners. This is to be welcomed as a method of avoiding disputes over what has been contributed as capital and what by loans or other arrangements. Fifthly, cl.13 provides that interest on loans made to the partnership by partners is payable at a prescribed rate, defined in cl.76(1) as 3 per cent above base rate or such other rate as set by the Secretary of State. This will correspond more closely to business reality at a given time than the existing set rate of 5 per cent.⁴⁰

Decision-making, management and authority⁴¹

Clause 14 of the Bill, which contains default rules, restates the existing law⁴² that all partners have the right to take part in management, and that decisions on “ordinary” matters are made by majority, although it now states expressly, for the avoidance of doubt, that taking or defending legal or arbitral proceedings is an ordinary matter. However, cl.14(4) provides that all other decisions must be taken unanimously, an improvement on the current law which refers only to change of business, change of the partnership agreement and the introduction of a new partner⁴³ and is silent on other non-ordinary decisions. In the light of this new provision, it is submitted that cl.4 of the Bill, which provides that the partnership agreement may be varied by unanimity in the absence of contrary agreement, is redundant. It should therefore be deleted although, for the avoidance of doubt, **J.B.L. 77* cl.14(4) should state expressly that it applies to variation of the partnership agreement.

The provisions on apparent authority remain the same⁴⁴: cl.16 provides that acts of a partner bind the partnership if they are done “for carrying on in the usual way business of the kind carried on by the partners”, unless the partner has no authority and the third party knows he has no authority or does not know or believe him to be a partner. The Bill omits the current statutory provision on actual authority,⁴⁵ as the Law Commissions considered that this is adequately dealt with by the general law of agency.⁴⁶

Liability⁴⁷

Liability of the partnership

At present, the partnership is liable for loss or injury to a third party caused by the wrongful act or omission of a partner.⁴⁸ Clause 22 of the Bill extends this liability to loss or injury to other partners, an extension which may be little used given that the wronged partner will be claiming against assets which are partly his own. The Explanatory Note⁴⁹ states that the phrase “wrongful act or omission” is to continue to be given the same broad interpretation as in *Dubai Aluminium Co Ltd v Salaam*.⁵⁰ It is thus not limited to common law torts and could cover, for example, breaches of trust.

Liability of the partners

(i) Unlimited liability Clause 3 of the Bill provides that each partner has unlimited liability. While this does not change the law,⁵¹ it does make it transparent.

(ii) Joint and several liability Unfortunately, whereas the opportunity for clarification of unlimited liability has been taken, the corresponding opportunity in respect of joint and several liability has been missed. At present, the 1890 Act states that partners' liability for wrongful acts,⁵² and in Scotland their contractual liability,⁵³ is joint and several. However, although the effect of the general law is that the contractual liability of partners in England and Wales is also joint and several,⁵⁴ the Act only states this liability to be joint.⁵⁵ It is submitted that cl.23(4)-(5) of the Bill, which provide that payment by a partner discharges the partnership obligation, and that this in turn discharges the personal liability of all partners, should include a clear statement that liability is joint and several. In addition, although cl.23(2) is intended to "mak[e] clear"⁵⁶ that joint and several liability to third parties does not affect the arrangements of partners *inter se*, it fails in this objective. Instead, it provides that each partner is personally liable, but not for a partnership obligation owed to another partner if the partnership agreement (including any default rules), or any other agreement between the partners involved, makes provision about whether that partner is entitled to an indemnity or contribution from the other partners.

(iii) Secondary liability Clause 24 of the Bill introduces a new concept, that the liability of the partners for partnership obligations is "secondary" to that of the partnership. In order for a third party to enforce a partnership obligation against the personal assets of a partner, he must first obtain judgment against the partnership, although he need not have attempted to enforce it against the partnership. The partners have a right of indemnity from the partnership (see above) and, in default thereof, of contribution from the other partners.⁵⁷ Clause 25 provides that rules of court may provide that a partner is restricted in, or prevented from, defending a claim for personal liability, where he has had an opportunity to participate in related proceedings against the partnership. Schedule 2 to the Bill amends the Limitation Act 1980 and the Prescription and Limitation (Scotland) Act 1973, so that an action to hold a partner personally liable is subject to the later of the applicable limitation period, or two years from the date of the judgment against the partnership establishing the amount of the partnership obligation.⁵⁸ These amendments give creditors extra time after the judgment to ascertain the identity and address of partners who were previously unknown to them.

(iv) Secondary liability Clause 33 of the Bill provides that, as at present,⁵⁹ departing partners remain liable for obligations incurred while they were partners. However, it also states that an agreement between the outgoing partner, the partnership, and a creditor, to release the outgoing partner from liability on a partnership contract, does not require valuable consideration. Although the **J.B.L. 79* current law provides that such an agreement is possible, it makes no reference to consideration,⁶⁰ and the Law Commissions believe that the amendment is necessary to clarify uncertainty in the law of contract.⁶¹ However, since contracts will now be made with the partnership rather than the partners, this clarification is less important than it would previously have been.

Liability of apparent partners

The Bill provides that (as currently⁶²) those who are not partners but appear to third parties to be partners, either because they are held out as such (cl.26) or are former partners (cl.35), may be liable as partners. It is unfortunate that the opportunity has not been taken to put these closely related provisions in a single clause, or at least in consecutive clauses. Although there are cross references in both cl.26 and 35, it is submitted that this is insufficient, especially given that cl.26 expressly states that it applies also to former partners, which is potentially misleading when cl.35 qualifies that application considerably.

Clause 26 provides that, as at present,⁶³ a person who represents himself or knowingly allows himself to be represented as a partner is personally liable for any partnership obligation incurred to a third party who deals with the partnership in reliance on that representation. It also provides that the person held out has a right of indemnity from the partnership, but that this does not affect any claim the partnership might have against him.

Clause 35 provides that a former partner may be personally liable under cl.26. Amendment is required either to the title of cl.35 or to its text, because the title refers to former partners and employees whereas the text only refers to a person who has ceased to be a partner. On the basis that the Explanatory Notes refer to former partners,⁶⁴ and that the position of a former employee is adequately dealt with by the general provisions on holding out in cl.26, it is submitted that the reference in the title to former employees should be deleted.

Clause 35(4) provides that there is no liability if the representation consists merely of the use of the same partnership name or a name containing the name of the retired partner. Currently, there is protection against liability in these two situations only where a partner has died.⁶⁵ It is submitted that, in any event, provision for continued use of the same partnership name is unnecessary. While a partnership using the name "Smith and Singh" might be impliedly representing that Smith and Singh are still partners, it surely cannot be held thereby to be representing that former partners other than Smith and Singh are still partners.

In recognition of the ineffectiveness of advertising a partner's retirement in the *London, Edinburgh or Belfast Gazette*,⁶⁶ this is no longer to constitute sufficient ***J.B.L. 80** notice to a third party who had no dealings with the firm prior to the retirement.⁶⁷ Instead, cl.35(2) and (3) provide that there will be no liability if the representation was made or communicated to the third party while the partner was still a partner, but the third party did not deal with the partnership within a year or had notice (in person or at his last known address) of the retirement prior to dealing.

Departure of a partner

Voluntary departure⁶⁸

At present, any partner in a partnership at will, that is to say, a partnership of no fixed duration, may leave simply by giving notice, and the result of this is dissolution of the partnership.⁶⁹ Since the Bill makes a partnership a separate legal person, it will continue rather than dissolve when a partner leaves, but since the partner will have to be bought out, cl.30(2) provides that he must give eight weeks' notice of leaving. This allows the other partners time to adjust and plan for the buyout. In order to avoid one partner in a failing partnership giving notice and being paid out ahead of the remaining partners, cl.30(3) provides that if other partners subsequently give notice, those notices take effect at the same time as the notice given by the first partner.

Clause 30(2) also permits withdrawal on eight weeks' notice from partnerships of fixed duration where a partner has ceased to be a partner "involuntarily". In such partnerships, partners currently have no way of leaving other than applying for judicial dissolution⁷⁰ and are thus locked in despite the change in membership. However, the Explanatory Notes⁷¹ describe involuntary departures as those where a partner has died or become insolvent whereas, it is submitted, the term is also apt to include expulsion. Clarification of this issue is therefore required.

Involuntary departure⁷²

At present, there is no right to expel a partner unless the partnership agreement expressly confers such a power,⁷³ although on dissolution the court may order the buyout of particular partners rather than full realisation of the assets.⁷⁴ Clause 31 of the Bill provides partners with the power to expel another partner if his share is charged to pay a non-partnership debt, a situation which previously gave rise to an option to dissolve the partnership.⁷⁵ However, three months' notice of the expulsion must be given, and the requirement that "The other partners" give ***J.B.L. 81** notice of expulsion implies that all other partners must agree. This would certainly be consistent with the requirement in cl.14 that extraordinary decisions must be taken unanimously (see above), but it is submitted that the provision should refer to "All other partners" for the avoidance of doubt.

Clause 47 and Sch.3 provide for a new power of judicial expulsion on the application of a partner, on grounds similar to those currently applicable to judicial dissolution⁷⁶ and proposed (see below) for judicial break up of the partnership. Where the expulsion is of a partner other than the petitioning partner, the grounds are that the partner to be expelled is permanently physically or mentally incapable, or guilty of conduct likely to adversely affect the business, a serious or persistent breach of a provision of the Bill or the partnership agreement, or fraud, misrepresentation or non-disclosure affecting that agreement; that it is unlawful for the partner to remain a partner; that there is no reasonable prospect of the business being carried on at a profit unless the partner is removed; or that it is just and equitable to expel him. Where the expulsion is of the petitioning partner, the grounds are incapacity, adverse conduct, breach of the Bill or the agreement, fraud, misrepresentation or non-disclosure, or that it is just and equitable. The grounds of unlawfulness and no reasonable prospect of a profit do not apply in the latter situation. It is submitted that it is surely appropriate that the court, which is already able to order the dissolution of a partnership, is also able to order expulsion, since this is a lesser power and may in fact avoid use of the more destructive power.

Valuation of a partner's share⁷⁷

The current law makes no provision for the valuation of the share of a partner who leaves the partnership, although an application to the court may be made for the taking of an account.⁷⁸ However, as discussed above, such provisions are essential now that departing partners are unlikely to be able to dissolve the partnership. Clause 32 of the Bill provides, as a default rule, that a departing partner is entitled to be paid the amount to which he would have been entitled on the date of leaving, had the business been sold on a break up basis (for the greater of the market value of the partnership property and that of the business as a going concern) and the proceeds distributed as on a winding-up under cl.44 (see below). If the departing partner is not paid, he may make an application to the court under cl.53 of the Bill (see below).

Orders for the benefit of former partners⁷⁹

Clause 53 of the Bill provides that if a former partner (or a person interested in the winding-up (see below)) claims that the business is being conducted or wound up **J.B.L. 82* in a way that is prejudicial to his interests, the court may make an order for his benefit if it is satisfied that such an order is just and equitable. Examples of orders given in cl.53 include the taking of an account, interim payments and provision of security pending such an account, break up of the partnership, and the conduct of the winding-up. As the Law Commissions note,⁸⁰ it is likely that this will encourage partnerships to pay out former partners and treat them appropriately.

Termination⁸¹

Break up

Clauses 38 *et seq.* of the Bill introduce the concept of the break up of a partnership, an event which marks the start of the winding-up process, as dissolution marks the end. According to the Explanatory Notes to cl.38,⁸² break up is equivalent to dissolution under the existing law. However, the Explanatory Notes to cl.45⁸³ (on dissolution) assert that the fact that the partnership exists after break up means that dissolution will never be a defence to a claim by or against a partnership. It is submitted that while break up will be no defence, dissolution must be if, as the same Notes provide, this “marks the expiry of the life of the legal entity”. The Notes therefore require clarification.

As discussed above, the granting of separate legal personality means that partnerships will no longer break up automatically when their membership changes. However, cl.38 provides that the partnership will still break up automatically on the happening of certain events. These are that there are fewer than two partners, the partnership agreement provides for break up, the court has so ordered, or half the partners agree. However, some reorganisation of this clause is required because cl.38(1) says that a partnership breaks up “only” in the event of the first three of these, but cl.38(3) then provides for the fourth. No period of grace is given to sole partners to find new partners, which contrasts with the position in public limited companies⁸⁴ and LLPs.⁸⁵

Clauses 39 *et seq.* effectively restate the current law.⁸⁶ After break up (currently after dissolution), the business may only be carried on so far as is necessary to wind the business up, and partners are entitled to publicise the break up.

Clause 47 provides that, on the application of a partner or the Secretary of State, the court may order the break up of the partnership⁸⁷ on grounds which are **J.B.L. 83* broadly similar to those on judicial dissolution⁸⁸ and proposed for judicial expulsion (see above). They are that a partner other than the applicant is incapable, or guilty of adverse conduct, breach of the Bill or the agreement, or fraud, misrepresentation or non-disclosure; that it is unlawful for the partner to remain a partner or for the partnership business to be carried on; that there is no reasonable prospect of carrying on the business at a profit; or that it is just and equitable. Fraud, misrepresentation or non-disclosure affecting the agreement and unlawfulness are not currently grounds for judicial dissolution, although the latter gives rise to automatic dissolution.⁸⁹

Winding up

Clause 43 of the Bill retains the current provision⁹⁰ that partners have authority to wind up the business,⁹¹ and provides a default rule that decisions on winding up are taken by majority. This avoids

the application of cl.14 (see above), under which such decisions would presumably be extraordinary and thus require unanimity at a time when this might be difficult to achieve.

Liquidator

At present there are no provisions for the appointment of a liquidator in relation to a solvent partnership. Partners normally wind up the business, although the court may order an account⁹² and, in England and Wales, appoint a receiver to deal with realisation of assets and payment of debts and/or a manager to run the business.⁹³ If the partnership is insolvent, the Insolvent Partnerships Order 1994 (IPO)⁹⁴ enables the court to appoint a liquidator or administrator to wind up the partnership. In Scotland, the court may appoint a judicial factor to wind up the business, but the IPO does not apply.

Clauses 50 *et seq.* of the Bill supplement these possibilities by providing that the court may appoint a liquidator to wind up a partnership and distribute its property. This is intended to provide a faster and cheaper winding-up in the event of deadlock in the partnership,⁹⁵ although it is submitted that the same tasks could be performed by a receiver given the power to manage and take an account.⁹⁶ Schedule 4 sets out in details the effect of the appointment, the duties and powers of the liquidator including the taking of an account, and the functions of a provisional liquidator. These are largely modelled on the powers and functions of ***J.B.L. 84** a liquidator in a members' voluntary winding-up of a company.⁹⁷ The Explanatory Notes⁹⁸ provide that this procedure applies to solvent partnerships which, since the IPO applies to insolvent partnerships, must be correct. However, cl.50 itself does not actually state this restriction and, in the interests of clarity, it should.

An application for the appointment of a liquidator may be made by any partner, creditor or "a person interested in the winding up". The latter is defined in cl.50 as a person who ceased to be a partner on or after break up, or their personal representative or liquidator. However, according to the Explanatory Notes,⁹⁹ it is a person who on winding-up may be obliged to contribute or receive money as if he were a partner, which also includes apparent partners under cl.26, and partners who retired prior to the break up but who have some liability by virtue of cl.35 (see above). The definition therefore requires clarification.

The Law Commissions note the criticisms made of their proposal in the GP Consultation Paper¹⁰⁰ that the liquidator must get the unanimous approval of partners, who by definition are in dispute, prior to making compromises or arrangements with creditors, compromising a partner's liability to contribute or carrying on business.¹⁰¹ As a result, Sch.4 to the Bill now provides that these powers are exercisable either with unanimous approval or by court sanction.

Distribution

Clause 44 of the Bill provides default rules for priorities in distribution which are similar to the current law,¹⁰² that is to say, payment of debts to third parties, debts to partners, partners' capital, and finally any surplus to partners in their profitsharing ratios. If there is a deficit when repaying debts, this is to be made good by the partners in the same ratio as they would share losses. At present, it is the profit sharing ratio which is determinative,¹⁰³ although of course in many partnerships this will be the same. However, there is no longer any obligation on partners to make good deficiencies when paying out partners' capital.

Dissolution

Clause 45 of the Bill provides that dissolution, in its new meaning of the end of the winding-up process, may take place only after certain conditions have been fulfilled. These are that all partnership property has been distributed and all trust property transferred, that there are no outstanding liabilities of or claims by or against the partnership, that any liquidator has ceased to hold office, and that there is no risk of the partnership incurring liabilities as a result of past acts or ***J.B.L. 85** omissions. These give rise to a number of difficulties. First, there is a potential overlap between the absence of claims and liabilities, and the absence of any risk of liability. Secondly, the Explanatory Notes¹⁰⁴ assert that the precondition of the distribution of partnership property means that it will never be a defence to a claim by a partnership that it has been dissolved. This simply does not make sense. Thirdly, the Notes assert that the precondition that there is no risk of the partnership incurring any liabilities means that it will never be a defence to a claim against a partnership that it has been dissolved. Presumably what this means is that whenever there is a claim there will, by definition, still be a partnership to sue. However, it is submitted that it is impossible to guarantee that there is no risk

of liability (for example, for latent damage), and therefore either a partnership can never be dissolved or the condition that there is no risk of liability cannot be applied strictly.

Limited partnerships

Clauses 54-72 of the Bill set out specific provisions on limited partnerships. Unfortunately, they do not contain a clear definition of a limited partnership, and indeed the first four clauses concern partners rather than the partnership entity, while the provisions on registration are, illogically, towards the end, after those on insolvent limited partnerships.

Registration¹⁰⁵

At present, the application for registration must contain the name of the partnership, the nature of the business, the principal place of business, the names and addresses of the partner, the term (if any) of the partnership, a statement that the partnership is limited and identification of which partners are limited partners, the amount contributed by each limited partner, the date of commencement and the signature of all proposed partners.¹⁰⁶

Clause 66 of the Bill makes a number of amendments to this.¹⁰⁷ First, the requirement to state the nature of the business is removed on the ground that this provides no benefit.¹⁰⁸ Secondly, the current obligation to state that the partnership is limited is also removed. While this will be evident from the application to register, and from the name (see below), the latter can also be said of an application to register a limited company, and that still requires a statement of limited liability.¹⁰⁹ Thirdly, cl.66(3)(c) provides that it is the address of the ***J.B.L. 86** registered office, rather than the principal place of business,¹¹⁰ which must be given, and a statement of whether it is in England and Wales or Scotland.¹¹¹ This enables the business to move its substantive operations without amending the register. Clause 65 provides that the address must also be given on partnership documents, and that a failure without reasonable excuse to ensure this is done is an offence by the general partners. This is a new disclosure obligation for limited partnerships not subject to the Business Names Act (see below), with a new sanction. Fourthly, only the addresses of the general partners need be disclosed, and only they need sign the application. The reforms complement the removal of liability from limited partners for errors in registration (see below).

Fifthly, the requirement to state the date of commencement is replaced by a requirement, if the partnership is already in existence (as a general partnership) prior to registration, to state the date of its formation. At present, it is uncertain whether a limited partnership commences on registration or on satisfying the definition of a partnership in s.1 of the 1890 Act. The Explanatory Note to cl.67¹¹² states that a limited partnership will exist from the date of registration.¹¹³ However, what cl.67(3) actually says is that "If the partnership ... has not been formed before registration, the partnership is formed when it is registered". This implies that the position would be different if a partnership has been formed prior to registration, and therefore that a limited partnership would not then be formed on registration. This cannot be correct, and it is submitted that the provision should simply state that a limited partnership is formed only when it is registered.

Clause 54 explains the interrelationship between registration and a partner's limited status. It provides that a person becomes a limited partner only when registered as such, and ceases to be a limited partner only when deregistered, or on death or dissolution, or when the partnership is dissolved.

Name¹¹⁴

Clause 63 of the Bill introduces a new requirement, that the name of a limited partnership must end in "limited partnership", "lp" or "LP" or, if registered in Wales, with the Welsh equivalent. It also prohibits registration of a name already registered. Clause 65 provides that the name must be disclosed on partnership documents, and a failure without reasonable excuse to ensure this is done is an offence by the general partners. These provisions give those dealing with the firm notice that the assets of some partners are not available to them as partnership creditors and bring limited partnerships into line with limited companies.¹¹⁵

***J.B.L. 87 Disclosure under the Business Names Act 1985**

Schedule 11 to the Bill restricts the application of the Business Names Act 1985 (BNA) to limited partnerships. First, they will be subject to it only if they trade under a name other than their registered name. Secondly, it only requires disclosure of the registered name and the name(s) of the general

partner(s), rather than the names of all partners.

Liability of limited partners¹¹⁶

Clauses 56-57 of the Bill state that, as at present,¹¹⁷ a limited partner has no personal liability, unless he withdraws part or all of his capital contribution or takes part in management. He then becomes personally liable under cl.23 (see above) to the extent of the withdrawn capital or for any partnership obligation incurred during or as a result of his taking part in management. Since cl.13 provides that a limited partner is no longer required to contribute capital at all,¹¹⁸ it is submitted that a withdrawal of capital should enable a corresponding reduction in liability, so long as the partnership is under a duty to register the withdrawal. However, the liability does come to an end when the limited partner ceases to be a limited partner.¹¹⁹

Schedule 6 to the Bill now provides a list of activities which a limited partner may undertake without being considered to take part in management. Some idea of the contents of the list may be gathered from its subheadings; "Strategic decisions", "Enforcement of rights", "Approving accounts of a limited partnership", "Contract work", "Directorships etc", "Conflicts of interest between limited and general partners" and "Consultation and advice". This will provide limited partners with more certainty than the current law.

Rights and duties of limited partners¹²⁰

Clauses 59(1) and (2) of the Bill clarify the rights and duties of limited partners; they are not subject to the duties of keeping partners informed, accounting for the profits of a secret business or keeping records¹²¹; and their acts for the carrying on of the partnership business in the usual way do not bind the partnership.¹²²

***J.B.L. 88** Schedule 11 to the Bill provides that limited partners will no longer be guilty of an offence if the partnership contravenes the BNA.

Decision-making¹²³

Decisions will continue to be taken by the general partners, but otherwise cl.59(4) and (5) of the Bill reflects cl.14, by providing that ordinary decisions are to be taken by majority (as at present¹²⁴) and that all other decisions are to be taken unanimously. It is now expressly stated that, in either case, a sole general partner may take such decisions. Clause 59(6) provides that the decision whether to give a limited partner authority is not an ordinary matter, which presumably means that unanimity is required, but it would be clearer if this was stated. Although the Report asserts that these are default rules,¹²⁵ cl.59 does not say this, an omission which needs to be rectified.

Clause 59(7) provides that the partnership agreement cannot be varied under cl.59(4) or (5), which presumably means that cl.4, which provides for partnership agreements to be amended by unanimity, applies, and includes limited partners. Again, this could and should be clearly stated.

Clause 60(1) provides, as a default rule, that the introduction of a new partner requires the consent of the general partner, or a majority of the general partners if more than one, or all limited partners if there is no general partner. Similarly, cl.61 provides that, as a default rule, limited partners are not included in the reference to the "partners" in cl.38(3), half of whom can agree to end the partnership, unless there are no general partners. In addition, cl.38(1)(a), which provides for break up if, *inter alia*, there are fewer than two partners, is not modified for limited partnerships. A limited partnership with two limited partners and no general partners would therefore not break up under this clause. These are curious provisions since they imply that a limited partnership with no general partners is possible, and indeed the Bill omits the current requirement¹²⁶ that a limited partnership must have at least one general and one limited partner. However, Sch.8(2)(2) provides that not having one or more general partners is a ground for deregistration, and therefore clarification of the position is required in the main text of the Bill.

Expulsion of a partner¹²⁷

The provisions on judicial expulsion in cl.47 of the Bill apply equally to limited partnerships. However, cl.60(2) provides that cl.31, under which partners may expel a partner whose partnership share is charged for a private debt, does not ***J.B.L. 89** apply where that partner is a limited partner. This reflects the current law, except that the current option is dissolution rather than expulsion.¹²⁸

Liquidator¹²⁹

The provisions in cl.50-51 of the Bill on the appointment of a liquidator apply to limited partnerships, but cl.61 provides that limited partners have no role in approving the exercise of the liquidator's powers or attending meetings, unless the partners agree otherwise or there are no general partners.

Special limited partnerships

Clause 73 of the Bill, which applies only in England and Wales, provides for a form of limited partnership without legal personality, known as a special limited partnership. It was not an option canvassed in the Consultation Papers, but resulted from the concerns raised in response that the tax transparency of limited partnerships with separation legal personality might be questioned by foreign tax authorities. Since limited partnerships are the chief structure for the UK private equity industry and European venture capital funds, the Law Commissions considered it appropriate to continue with a form of limited partnership which would undoubtedly be treated outside the UK as tax transparent.

Schedule 10 modifies the application of the Bill to special limited partnerships and largely disapplies the default rules. A special limited partnership is defined as a relation (rather than an association) which subsists between two or more persons carrying on business together (rather than being formed when they start to carry on business) under a partnership agreement. The partners are agents of each other (rather than of the partnership), the partnership does not have capacity and partnership property is that acquired on behalf of the partnership or contributed to it as capital (rather than that to which it is beneficially entitled). The provisions of the Bill on the execution of deeds, secondary liability, and the admission and withdrawal of partners do not apply. The provisions on break up are modified so that a special limited partnership will break up not only if the agreement so provides or by court order (on more limited grounds than other partnerships) but also if a general (but not a limited) partner gives notice, or if any partner dies or is dissolved. The conditions precedent to dissolution do not apply, and indeed neither does dissolution since it now signifies the end of the entity, whereas a special limited partnership is not an entity.

Conclusion

After a century of service, it is scarcely surprising that partnership legislation requires updating and, while criticisms of the Bill have been made in this article, it is submitted that with minor amendments it could provide the statutory basis **J.B.L. 90* for partnership law for at least another century. Whether modest reforms to an inherently modest form of business organisation can command legislative attention remains to be seen, but the fact that the government is consulting on the business costs and benefits of the Bill¹³⁰ suggests that it is at least being given serious consideration.

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1. (2000) Law Commission Consultation Paper No.159/Scottish Law Commission Discussion Paper No.111 *Joint Consultation Paper on Partnership Law*. n.1 above, para.8.60.
 2. (2001) Law Commission Consultation Paper No.161/Scottish Law Commission Discussion Paper No.118 *Limited Partnerships Act 1907: a Joint Consultation Paper*. Report, n.3 above, para.12.38. See also Deards, n.4 above, at 374.
 3. (2003) The Law Commission and the Scottish Law Commission Report (Law Com No.283) (Scot Law Com No.192) *Partnership Law*. 1890 Act, s.44.
 4. See E. Deards, "Partnership Law in the 21st century" [2001] J.B.L. 351 at 362-363. *ibid.* s.44.
 5. See further the GP Consultation Paper, n.1 above, Pt V.Report, n.3 above, Explanatory Notes 132-133 to the Bill.
 6. 1890 Act, s.1. See further LP Consultation Paper, n.2 above, paras 3.11 *et seq.*
 7. *ibid.* s.45.1907 Act, s.8 and Form LP5 on which limited partnerships are registered.
 - 8.

ibid. s.2.Schs 7, 8, and 9 provide for the registration of changes and corrections, deregistration and inspection of the register, and the possibility of electronic filing, delivery and inspection of documents.

9. GP Consultation Paper, n.1 above, para.4.34. See, however, the difficulties apparent in *Smith v Anderson* (1880) 15 Ch.D. 247. See further LP Consultation Paper, n.2 above, para.3.15.
10. GP Consultation Paper, n.1 above, para.5.26. Companies Act 1985, s.2.
11. Report, n.3 above, paras 4.28-4.29. 1907 Act, s.8.
12. cl.76(2) of the Bill. Where the Business Names Act 1985 applies, Sch.11 to the Bill provides that it is the registered office, rather than the principal place of business, which must be disclosed.
13. *Khan v Miah* [2000] 1 W.L.R. 2123. Report, n.3 above, Explanatory Note 175 to the Bill.
14. Report, n.3 above, para.4.3. Report, n.3 above, paras 16.28-16.29.
15. See further GP Consultation Paper, n.1 above, Pt IV. See further LP Consultation Paper, n.2 above, para.3.32.
16. The Inland Revenue has confirmed that tax legislation will be introduced to ensure that partnerships continue to be treated as transparent for tax purposes (DTI, *The Reform of Partnership law: the economic impact; A Consultation*, April 2004, para.3.8). Companies Act 1985, ss.25, 26 and 349 and Business Names Act 1985, s.4. See further E. Deards, "Limited Partnerships: Limited Reforms?" [2003] J.B.L. 435 at 439.
17. Report, n.3 above, Explanatory Note 20 to the Bill. See further LP Consultation Paper, n.2 above, Pt IV.
18. *cf.* s.5 of the 1890 Act which provides that a partner is the agent of the firm and the other partners. 1907 Act, ss.4 and 6(1).
19. GP Consultation Paper, n.1 above, paras 13.30-13.33, (2002) Law Commission Consultation Paper No.164 *Registration of Security Interests: Company Charges and Property other than Land* and (2002) Scottish Law Commission Discussion Paper No.121 *Registration of Rights in security by Companies.* *cf. ibid.* s.4(2).
20. See further GP Consultation Paper, n.1 above, Pt XIX. *ibid.* s.4(3) and cl.56(2) and (3) of the Bill. The Law Commissions originally consulted on a time-limit on the liability of limited partners (LP Consultation Paper, n.2 above, para.4.49) but in the light of this amendment a special time-limit would only be relevant while the limited partner remained a partner, and this has not been taken forward in the Bill. Limited partners will therefore be subject to the same limitation periods as general partners (see above).
21. Companies Act 1985, s.36A. See further LP Consultation Paper, n.2 above, Pt V.
22. Report, n.3 above, Explanatory Note 54 to the Bill. cl.9 and 15 of the Bill.
23. Law of Property Act 1925, s.34. The usual practice is for two partners to sign, as this is sufficient to overreach the beneficial interests of the other partners on a sale, so that a purchaser need not be concerned with trusts for sale (Law of Property Act 1925, s.27). cl.16 of the Bill.
24. See further GP Consultation Paper, n.1 above, Pt XI. See further LP Consultation Paper, n.2 above, paras 4.8 *et seq.*
25. 1890 Act, ss.20-21. 1907 Act, s.6.
26. cl.17(1)(1) of the Bill. This is the English definition; cl.17(1)(b) provides that in Scotland, where the separation of legal and beneficial ownership is not recognised, partnership property is defined negatively as not including property held by the partnership in trust. Report, n.3 above, para.16.19.
27. See further GP Consultation Paper, n.1 above, Pt XIV. 1907 Act, s.4.
28. *Const v Harris* (1924) Turn. & R. 496; 37 E.R. 1191. See further LP Consultation Paper, n.2 above, para.5.36.
29. Report, n.3 above, paras 11.41-11.66. 1907 Act, s.6(5)(c).
- 30.

n.1 above, para.14.32. See further LP Consultation Paper, n.2 above, para.5.42.

31. *ibid.* para.15.21. See n.16 above.
32. Report, n.3 above, paras 11.67-11.70.
33. 1890 Act, s.28. The Law Commissions accept (Report, n.3 above, para.11.35) that the general law may impose pre-disclosure duties, but argue that the extent of these is unclear.
34. See further GP Consultation Paper, n.1 above, Pt XXI.
35. Under s.5 of the Business Names Act, a breach of its disclosure requirements makes contracts unenforceable if the breach prevented the claimant pursuing a claim under the contract or caused him financial loss in connection with the contract.
36. See further GP Consultation Paper, n.1 above, Pt XII.
37. 1890 Act, s.24.
38. [1997] 1 W.L.R. 1367.
39. 1890 Act, s.42.
40. *ibid.* s.24.
41. See further GP Consultation Paper, n.1 above, Pt XII.
42. 1890 Act, s.24.
43. *ibid.* ss.19 and 24.
44. *ibid.* s.5.
45. *ibid.* s.6.
46. Report, n.3 above, para.6.12.
47. See further GP Consultation Paper, n.1 above, Pt X.
48. 1890 Act, s.10.
49. Report, n.3 above, Explanatory Note 62 to the Bill.
50. [2003] 1 All E.R. 97. See further J. Machell, "Vicarious liability for equitable wrongs: partners beware!" [2003] N.L.J. 405.
51. ss.5 and 6 of the 1890 Act provide that partners are agents of each other and, as such, they have unlimited liability.
52. *ibid.* ss.12 and 9.
53. *ibid.* s.9.
54. s.3 of the Civil Liability (Contributions Act) 1978 provides that judgment recovered against one person does not bar an action against another person who is jointly liable with him; and Sch.1 to the CPR re-enacting RSC Ord.81 provides that a judgment against a partnership may be enforced against a partner.
55. s.9 of the 1890 Act provides that partners in England are jointly liable for debts and obligations of the partnership.

- [56.](#) Explanatory Note 67 to the Bill.
- [57.](#) cl.12 of the Bill.
- [58.](#) The Law Commissions state that these reforms can readily be incorporated into the wider reforms proposed to limitations periods (Report, n.3 above, para.7.64 and (2001) Law Commission Report Law Com. No.270 *Limitation of Action*).
- [59.](#) 1890 Act, s.17.
- [60.](#) *ibid.* s.17(3).
- [61.](#) Report, n.3 above, paras 6.87-6.88 and Explanatory Note 96 to the Bill.
- [62.](#) 1890 Act, ss.14 and 36.
- [63.](#) *ibid.* s.14.
- [64.](#) Report, n.3 above, Explanatory Notes 104-106 to the Bill.
- [65.](#) 1890 Act, s.14(2).
- [66.](#) Report, n.3 above, para.6.86.
- [67.](#) 1890 Act, s.36.
- [68.](#) See further GP Consultation Paper, n.1 above, Pt VI.
- [69.](#) 1890 Act, s.26.
- [70.](#) *ibid.* s.35.
- [71.](#) Report, n.3 above, Explanatory Note 88 to the Bill.
- [72.](#) See further GP Consultation Paper, n.1 above, Pts VI and XIII.
- [73.](#) 1890 Act, s.25.
- [74.](#) *Syers v Syers* (1875-76) L.R. 1 App.Cas. 174.
- [75.](#) 1890 Act, s.33(2).
- [76.](#) See n.70 above.
- [77.](#) See further GP Consultation Paper, n.1 above, Pt VII.
- [78.](#) CPR PD 40.
- [79.](#) See further GP Consultation Paper, n.1 above, Pt VIII.
- [80.](#) Report, n.3 above, paras 8.43-8.48.
- [81.](#) See further GP Consultation Paper, n.1 above, Pt VIII.
- [82.](#)

- Report, n.3 above, Explanatory Note 111 to the Bill.
- [83.](#) Report, n.3 above, Explanatory Notes 132-133 to the Bill.
- [84.](#) Companies Act 1985, s.24.
- [85.](#) *ibid.* s.24 as amended by the Limited Liability Partnerships Regulations 2001 (SI 2001/1090).
- [86.](#) 1890 Act, ss.37-38.
- [87.](#) See also Sch.3 which gives further, procedural, details.
- [88.](#) See n.70 above.
- [89.](#) 1890 Act, s.34.
- [90.](#) *ibid.* s.38.
- [91.](#) *ibid.* ss.38-39.
- [92.](#) See n.78 above.
- [93.](#) CPR Pt 69.
- [94.](#) SI 1994/2421.
- [95.](#) Report, n.3 above, para.12.47.
- [96.](#) See further Deards, n.4 above, at 374.
- [97.](#) GP Consultation Paper, n.1 above, para.8.44.
- [98.](#) Report, n.3 above, Explanatory Note 143 to the Bill.
- [99.](#) *ibid.* Explanatory Note 145 to the Bill.
- [100.](#) (2000) Law Commission Consultation Paper No.159/Scottish Law Commission Discussion Paper No.111 *Joint Consultation Paper on Partnership Law*. n.1 above, para.8.60.
- [101.](#) (2001) Law Commission Consultation Paper No.161/Scottish Law Commission Discussion Paper No.118 *Limited Partnerships Act 1907: a Joint Consultation Paper*. Report, n.3 above, para.12.38. See also Deards, n.4 above, at 374.
- [102.](#) (2003) The Law Commission and the Scottish Law Commission Report (Law Com No.283) (Scot Law Com No.192) *Partnership Law*. 1890 Act, s.44.
- [103.](#) See E. Deards, "Partnership Law in the 21st century" [2001] J.B.L. 351 at 362-363. *ibid.* s.44.
- [104.](#) See further the GP Consultation Paper, n.1 above, Pt V.Report, n.3 above, Explanatory Notes 132-133 to the Bill.
- [105.](#) 1890 Act, s.1. See further LP Consultation Paper, n.2 above, paras 3.11 *et seq.*
- [106.](#) *ibid.* s.45.1907 Act, s.8 and Form LP5 on which limited partnerships are registered.
- [107.](#) *ibid.* s.2.Schs 7, 8, and 9 provide for the registration of changes and corrections, deregistration and inspection of the register, and the possibility of electronic filing, delivery and inspection of documents.

- [108.](#) GP Consultation Paper, n.1 above, para.4.34. See, however, the difficulties apparent in *Smith v Anderson* (1880) 15 Ch.D. 247. See further LP Consultation Paper, n.2 above, para.3.15.
- [109.](#) GP Consultation Paper, n.1 above, para.5.26. Companies Act 1985, s.2.
- [110.](#) Report, n.3 above, paras 4.28-4.29. 1907 Act, s.8.
- [111.](#) cl.76(2) of the Bill. Where the Business Names Act 1985 applies, Sch.11 to the Bill provides that it is the registered office, rather than the principal place of business, which must be disclosed.
- [112.](#) *Khan v Miah* [2000] 1 W.L.R. 2123. Report, n.3 above, Explanatory Note 175 to the Bill.
- [113.](#) Report, n.3 above, para.4.3. Report, n.3 above, paras 16.28-16.29.
- [114.](#) See further GP Consultation Paper, n.1 above, Pt IV. See further LP Consultation Paper, n.2 above, para.3.32.
- [115.](#) The Inland Revenue has confirmed that tax legislation will be introduced to ensure that partnerships continue to be treated as transparent for tax purposes (DTI, *The Reform of Partnership law: the economic impact; A Consultation*, April 2004, para.3.8). Companies Act 1985, ss.25, 26 and 349 and Business Names Act 1985, s.4. See further E. Deards, "Limited Partnerships: Limited Reforms?" [2003] J.B.L. 435 at 439.
- [116.](#) Report, n.3 above, Explanatory Note 20 to the Bill. See further LP Consultation Paper, n.2 above, Pt IV.
- [117.](#) cf. s.5 of the 1890 Act which provides that a partner is the agent of the firm and the other partners. 1907 Act, ss.4 and 6(1).
- [118.](#) GP Consultation Paper, n.1 above, paras 13.30-13.33, (2002) Law Commission Consultation Paper No.164 *Registration of Security Interests: Company Charges and Property other than Land* and (2002) Scottish Law Commission Discussion Paper No.121 *Registration of Rights in security by Companies*. cf. *ibid.* s.4(2).
- [119.](#) See further GP Consultation Paper, n.1 above, Pt XIX. *ibid.* s.4(3) and cl.56(2) and (3) of the Bill. The Law Commissions originally consulted on a time-limit on the liability of limited partners (LP Consultation Paper, n.2 above, para.4.49) but in the light of this amendment a special time-limit would only be relevant while the limited partner remained a partner, and this has not been taken forward in the Bill. Limited partners will therefore be subject to the same limitation periods as general partners (see above).
- [120.](#) Companies Act 1985, s.36A. See further LP Consultation Paper, n.2 above, Pt V.
- [121.](#) Report, n.3 above, Explanatory Note 54 to the Bill. cl.9 and 15 of the Bill.
- [122.](#) Law of Property Act 1925, s.34. The usual practice is for two partners to sign, as this is sufficient to overreach the beneficial interests of the other partners on a sale, so that a purchaser need not be concerned with trusts for sale (Law of Property Act 1925, s.27). cl.16 of the Bill.
- [123.](#) See further GP Consultation Paper, n.1 above, Pt XI. See further LP Consultation Paper, n.2 above, paras 4.8 *et seq.*
- [124.](#) 1890 Act, ss.20-21. 1907 Act, s.6.
- [125.](#) cl.17(1)(1) of the Bill. This is the English definition; cl.17(1)(b) provides that in Scotland, where the separation of legal and beneficial ownership is not recognised, partnership property is defined negatively as not including property held by the partnership in trust. Report, n.3 above, para.16.19.
- [126.](#) See further GP Consultation Paper, n.1 above, Pt XIV. 1907 Act, s.4.
- [127.](#) *Const v Harris* (1924) Turn. & R. 496; 37 E.R. 1191. See further LP Consultation Paper, n.2 above, para.5.36.
- [128.](#) Report, n.3 above, paras 11.41-11.66. 1907 Act, s.6(5)(c).
- [129.](#) n.1 above, para.14.32. See further LP Consultation Paper, n.2 above, para.5.42.
- [130.](#)

ibid., para.15.21.See n.16 above.

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