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Scottish Limited Partnerships (Scottish LPs)

*Particular considerations where a
Scottish LP features as part of a fraudulent scheme*



In recent months Scottish LPs have attracted press attention due to their increasing prevalence in fraudulent activity. Of note is the reported role of 20 Scottish LPs in the high profile Moldovan bank fraud with losses estimated at \$1bn. The recent Radio 4 *File on Four* documentary noted that over the last four years over 8000 new Scottish LPs have been registered and expressed concern that not all of those LPs have been registered for legitimate business purposes but rather to mask fraudulent and money laundering activities.

The purpose of this note is to highlight some of the differences between Scottish LPs and limited partnerships registered in the rest of the UK and to flag some of the options and considerations to be taken into account in determining the appropriate strategy in the event that a Scottish LP is part of a more complex fraudulent structure.

What is a Scottish LP?

In common with LPs registered in the rest of the UK, a Scottish LP is a partnership formed in accordance with the Limited Partnerships Act 1907. A Scottish LP:

- Must have at least one general partner, responsible for the management of the Scottish LP and liable for the debts and other obligations of the Scottish LP;
- Will have one or more limited partners, who take no role in the management or decision making of the Scottish LP and whose liability is limited to the value of their capital contribution;
- Will be registered at Companies House and the partnership agreement governing the relationship between the partnership and its partners will be governed by Scots law;
- Will have its principal place of business and its domicile in Scotland although it may carry on activities in other jurisdictions; and
- Will be subject to the jurisdiction of the Scottish courts which will determine disputes in relation to the activities and/or assets of the Scottish LP.

What are the advantages of a Scottish LP?

Unlike limited partnerships registered in the rest of the UK, the Scottish LP has a legal personality of its own, distinct from that of its partners. That enables a Scottish LP to own assets in its own name; borrow money and grant security over those assets and enter into contracts on its own behalf. A Scottish LP can also sue and be sued as a separate legal entity.



Despite its separate legal personality, a Scottish LP is transparent for tax purposes, which means that the tax authorities look through the Scottish LP and only tax the profits arising from the Scottish LP's activities in the hands of its partners. The vehicle itself, unlike a company, is not subject to its own taxation regime. This tax transparency has meant that the Scottish LP has been an attractive vehicle for legitimate investment activity enabling a more tax efficient structure to deliver benefits to investors.

Why are Scottish LPs used as part of a fraudulent structure?

As well as the legitimate advantages of Scottish LPs, it appears that increasingly Scottish LPs are seen as an attractive vehicle for fraudulent activity for a number of reasons.

Scottish LPs are subject to limited reporting obligations. Minimal information requires to be filed and updated at Companies House. The required information includes:

- the name, general nature of business and principal place of business of the Scottish LP
- details of the general and limited partners
- details of the sums contributed by each partner

Depending on the particular structure adopted, the Scottish LP may not have any requirement to file annual accounts.

The general and limited partners may themselves be corporate vehicles and, if those companies are incorporated in a jurisdiction where ownership and governance structures are opaque, the identity of those who, in reality, own and control the Scottish LP can be masked.

Scottish LPs have become a common feature of legitimate investment structures and the involvement of a Scottish LP in a particular structure can be justified on the basis of tax efficiency when, in fact, its true purpose may be to disguise and layer fraudulent activity and money laundering.

Scotland's global reputation in the funds and financial services sector, as a respected and safe jurisdiction in which to undertake business, can be exploited by the Scottish LP in an effort to add credence to an otherwise fraudulent scheme.





How can the fraudulent activity of a Scottish LP be disrupted?

Dawn Raid

An order under section 1 of the Administration of Justice (Scotland) Act 1972, commonly referred to as a “dawn raid” order, can be a useful tool in order to secure and preserve property which may be the subject of future litigation. The Act gives the court the power to appoint commissioners to attend at defined locations, without notice, and gain entry to the premises in question with a view to identifying and taking custody of the relevant property. The property can be assets/documentation which are specifically defined or defined by reference to a particular category.

In order to be able to obtain such an order against a Scottish LP the following must be established:

- The court has jurisdiction to grant the order. Although the Scottish LP may be operating overseas this test will be satisfied on the basis that the LP has been established, registered and has its principal place of business, and is therefore domiciled, in Scotland.
- The party seeking the order intends to raise proceedings and there is a material risk of concealment or destruction of the property in question.
- The legal basis of the future claim can be articulated and that the property/documentation to be recovered is not required to make out the case (that would be rejected on the grounds of a fishing exercise) but in order to evidence or amplify the case or enable more specific allegations to be made.

This dawn raid tool, while useful, does not go as far as the types of orders that can often be obtained by Insolvency Practitioners under section 236 of the Insolvency Act in corporate insolvencies. It should be noted however that the Scottish LP is not subject to the provisions of the Insolvency Act 1986 (see below) and while the trustee enjoys analogous powers, in practice these may be difficult to enforce if the general partner in control of the Scottish LP is not itself domiciled in and subject to the jurisdiction of the Scottish court.



Interdict

Similar to the position in England and Wales, an interdict (Scottish equivalent of an injunction) can be obtained from the court to prevent the Scottish LP from dealing with or disposing of property or assets where the applicant can establish its legal entitlement to the property/assets in question or that future dealings by the Scottish LP would amount to a legal wrong. Immediate disruption of activity can be achieved by way of an interim interdict. An application for interim interdict may be able to be made on a without notice basis. No cross undertaking in damages requires to be given, although wrongful or abusive applications will potentially give rise to a claim in damages against the applicant. The order for interdict would prevent the Scottish LP from undertaking the particular actions in any part of the world as it is the Scottish LP which is the subject of the court order and the Scottish LP is subject to the jurisdiction of the Scottish courts. There may however be issues in relation to recognition and enforcement of that order in overseas jurisdictions. Only where a perpetual interdict order is obtained can that be registered for enforcement in other jurisdictions.

Inhibition/Arrestment

Where monetary obligations are owed by the Scottish LP to the applicant an inhibition and/or arrestment may be obtained to prevent the Scottish LP from disposing of any heritable property situated in Scotland and an arrestment may be able to be obtained to prevent any funds held in Scottish bank accounts from being dissipated.

The Scottish LP and insolvency

Unlike a limited partnership registered in the rest of the UK, the Scottish LP is not subject to the corporate insolvency regimes of the Insolvency Act 1986 but to the Scottish bankruptcy procedures. Specific advice should be sought to ensure that the specified pre-conditions are met and that the timescales of the Scottish bankruptcy process are factored into any wider enforcement strategy.



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