

**List of proposed amendments to the First Schedule to the LP Act (safe harbour activities)**

Limited partners are not allowed to take part in the management of the limited partnership. A limited partner who takes part in the management of the limited partnership is liable for all debts and obligations of the limited partnership incurred while he so takes part in the management as though he were a general partner.

The First Schedule to the LP Act sets out the activities which if undertaken by a limited partner, would not, in and of itself, result in the limited partner being regarded as taking part in the management of the limited partnership. (“Safe Harbour List”) (s6(3) LP Act) The Safe Harbour List provides certainty to limited partners that they will not lose their limited liability status solely by reason of them acting in the capacity specified in the Safe Harbour List.<sup>1</sup> The First Schedule applies to all types of limited partnerships, but with the introduction of fund limited partnerships (“fund LPs”), it is proposed that the list of activities be broadened only in respect of fund LPs. The existing list of activities will also be clarified for all limited partnerships.

ACRA seeks views on whether the following list of proposals addresses issues faced in funds practice:

**(a) Expansion of existing activities, proposed to apply to fund LPs only**

<b>Item no.</b>	<b>Current paragraph no. in First Schedule</b>	<b>Current provision</b>	<b>Proposal</b>	<b>Reason for proposal/ consultation question</b>
1	Para 1	Contracting with the limited partnership.	Proposal 1: To broaden para 1 of the First Schedule to include contracting with the general partner or other limited partners in the limited partnership, provided that the contract does not require, or the action under the contract does not involve, a limited partner	The proposal aims to reduce potential uncertainty, if any, as the current law is silent on whether the act of contracting with the general partner or other limited partners will be considered taking part in

<sup>1</sup> A limited partner may however be considered to be involved in the management of the limited partnership depending on the actual functions or duties that he carries out within the role in the Safe Harbour List.

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			taking part in the management of the limited partnership.	management. The proposal is consistent with the position in the UK and Hong Kong.
2	Para 2	Acting as an agent or employee of the limited partnership within the scope of the authority conferred by the partners.	<p>Proposal 2(a): To broaden para 2 of the First Schedule to include a limited partner acting as a “contractor”.</p> <p>Proposal 2(b): To broaden para 2 of the First Schedule to include the limited partner’s authorisation of a person to act within the scope of the activities permitted under para 2.</p>	<p>The scope of para 2 of the First Schedule currently refers to (1) an agent and (2) an employee of the limited partnership. In Hong Kong, the scope of the equivalent provision extends to (3) a member, (4) a contractor, (5) an officer of the limited partnership fund. In the Cayman Islands, the scope extends to (4) a contractor of the exempted limited partnership.</p> <p>Proposal 2(a) is consistent with the position in Hong Kong and the Cayman Islands. There is no concept of a member or an officer of a limited partnership in Singapore. Hence, the proposal does not include a member/ an officer.</p>

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				Proposal 2(b) is a natural extension of current para 2. It is also consistent with the position in Hong Kong.
3	Para 3	Acting as an agent or employee of a general partner of the limited partnership or as a trustee or other fiduciary or beneficiary of an estate or trust which is a general partner of the limited partnership, or as a trustee, advisor, shareholder or beneficiary of a business trust or a statutory trust which is a general partner of the limited partnership, or as a director, officer or shareholder of a corporate general partner of the limited partnership.	<p>Proposal 3(a): To broaden para 3 of the First Schedule to include the additional role of acting as a contractor of the limited partnership’s general partner.</p> <p>Proposal 3(b): To broaden para 3 of the First Schedule to include authorising a person to act in the roles mentioned under current para 3 (as well as any additional role under amended law):</p> <ul style="list-style-type: none"> <li>i. Agent/employee of a general partner</li> <li>ii. Trustee/ fiduciary/beneficiary of an estate/trust which is a general partner</li> <li>iii. Trustee/ advisor/ shareholder/ beneficiary of a business trust/ statutory trust which is a general partner</li> <li>iv. Director/ officer/ shareholder of a corporate general partner.</li> </ul>	<p>Proposal 3(a) is consistent with the position in Hong Kong and the Cayman Islands.</p> <p>Proposal 3(b) is consistent with the position in the UK and Hong Kong. ACRA understands from the feedback given that the activity in proposal (b) is a typical right/ common activity for limited partners.</p> <p>On proposal 3(c), ACRA understands from the feedback given that the activity in proposal(c) is a common activity for limited partners.</p> <p>On proposal 3(d), ACRA understands that a general partner that is structured as a limited partnership (GP1) may have management team members (of the fund) as limited</p>

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			<p>Proposal 3(c): To broaden para 3 of the First Schedule to include “acting as a director, member, employee, officer or agent of, or a shareholder or partner in any person appointed to manage or advise the limited partnership in relation to the affairs of the limited partnership”.</p> <p>Proposal 3(d): To seek views whether para 3 of the First Schedule should be broadened to include being a partner of the limited partnership’s general partner. (Note: This will be relevant only if the proposed reform to allow limited partnerships to be general partner is proceeded with.)</p>	<p>partners of GP1. These management team members may also invest into the fund limited partnership and be limited partners of the fund limited partnership (to increase alignment of interest). ACRA notes that only the UK’s safe harbour list has provided for acting as a partner of the limited partnership’s general partner as not counting towards management of the limited partnership. ACRA seeks views whether this activity should be included in the Safe Harbour List.</p> <p><b>Consultation question:</b> Do you take the view that para 3 of the First Schedule should be broadened to include being a partner of the limited partnership’s general partner?</p>
4	Para 4	Consulting with and advising the limited partnership or any partners of the limited partnership with respect to the	Proposal 4: To extend the scope of consulting with and advising the “limited partnership and any partners” in para 4 of the First Schedule to “limited	ACRA proposes to broaden para 4 of the First Schedule because in the structuring of funds, there could be an entity (which is not the general

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		business, affairs or transactions of the limited partnership.	partnership, any partners and any person appointed to manage or advise the limited partnership”.	partner) that manages or advises the limited partnership. The proposal is consistent with the position in the UK.
5	Para 5	Investigating, reviewing, approving or advising on the accounts or affairs of the limited partnership or exercising any rights as a limited partner of the limited partnership.	Proposal 5: To broaden para 5 of the First Schedule to include the activities of (a) the valuation of partnership’s assets and (b) consulting.	ACRA proposes to broaden para 5 of the First Schedule to include valuation of partnership’s assets because limited partners of fund LPs are investors and it is reasonable for investors to want to know the performance of their investment. As limited partners may not have the expertise to value partnership’s assets, ACRA suggests allowing limited partners to consult on the valuation. Proposal 5(a) is consistent with the position in the UK and Hong Kong. ACRA proposes to broaden para 5 of the First Schedule to include consulting because limited partners of fund LPs, being investors, should be able to consult on the accounts or affairs of the limited partnership without the legal uncertainty that they may lose their limited liability

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				status in so doing. Proposal 5(b) is consistent with the position in Hong Kong.

**(b) New activities, proposed to apply to fund LPs only**

Item no.	Proposal to include the following additional activities to the Safe Harbour List	Reason for proposal
6	<p>Proposal 6: Activities relating to serving on a board/committee:</p> <p>a) Serving on a board/ committee of the limited partnership.</p> <p>b) Serving on a board/ committee of the limited partnership's general partner.</p> <p>c) Serving on a board/ committee of the limited partnership's limited partners.</p>	<p>Proposals 6(a) and 6(b) are consistent with the position in Hong Kong and the Cayman Islands.</p> <p>Institutional investors (limited partners) may have obligations to their investors/ members and serving on a board/ committee of the limited partnership will allow the institutional investors to assess the investment decisions of the general partner. Similarly, high net worth individuals (limited partners) may also wish to serve on a board/ committee of the limited partnership to assess the performance of the investment. Committees could be set up such that consent (for matters that go beyond the scope set out in the limited partnership agreement) from the relevant bodies could be obtained.</p> <p>Proposal 6(c) is consistent with the position in the Cayman Islands. As the activity in proposal 6(c) is even more removed than the activity in proposal 6(a) and proposal 6(b) in terms of the potential of a limited partner</p>

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		exercising management function over the limited partnership, ACRA suggests proposal 6(c) for clarity and completeness.
7	<p>Proposal 7: (i) Appointing/ nominating a person to serve on a board/ committee of the:</p> <p>(a) limited partnership;</p> <p>(b) general partner; or</p> <p>(c) limited partner.</p> <p>(ii) Revoking such appointment.</p>	<p>This is an extension of the preceding item. Proposals 7(i)(a) and (b) are consistent with the position in Hong Kong and the Cayman Islands.</p> <p>Proposal 7(i)(c) is consistent with the position in the Cayman Islands. As the activity in proposal 7(i)(c) is even more removed than the activity in proposal 7(i)(a) and 7(i)(b) in terms of the potential of a limited partner exercising management function over the limited partnership, ACRA suggests proposal 7(i)(c) for clarity and completeness.</p>
8	<p>Proposal 8: Serving on a board/ committee of a corporation -</p> <p>(a) in which the limited partnership has an interest; or</p> <p>(b) which provides management, consultation, custody or other services to the limited partnership, or having a business relationship with the limited partnership.</p>	<p>Proposal 8(a) allows limited partners to sit on the board/ committees of corporations in which the limited partnership invests in. Feedback shows strong support for proposal 8(a), with respondents indicating that the activity in proposal 8(a) is a typical activity. Proposal 8(a) is consistent with the position in Hong Kong and the Cayman Islands.</p> <p>Proposal 8(b) is consistent with the position in Hong Kong and the Cayman Islands.</p>
9	<p>Proposal 9: (i) Appointing a person to serve on a board/ committee of a corporation:</p> <p>(a) in which the limited partnership has an interest; or</p>	<p>This is an extension of the preceding item. Limited partners (as investors to the fund) may hold multiple investments and may not have the time to sit on the boards/ committees or may prefer to appoint a professional to sit on the boards/ committees. The proposal is consistent with the position in Hong Kong.</p>

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	<p>(b) which provides management, consultation, custody or other services to the limited partnership, or having a business relationship with the limited partnership.</p> <p>(ii) Revoking such appointment.</p>	
10	<p>Proposal 10: Giving/ withholding/ refusing consent/ approval as contemplated by the partnership agreement.</p>	<p>ACRA understands that limited partnership agreements in relation to funds typically confer rights on the limited partner to grant consent/ give approval under certain predefined scenarios. The proposal is to keep pace with commercial practice. The proposal is consistent with the position in the Cayman Islands and Luxembourg.</p>
11	<p>Proposal 11: Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the limited partnership including —</p> <ul style="list-style-type: none"> <li>(a) the enforcement of any right under the partnership agreement (unless such right is to carry out management functions);</li> <li>(b) whether the limited partnership should end or the term of the limited partnership should be extended; and</li> <li>(c) changes in the persons responsible for the day-to-day management of the limited partnership.</li> </ul>	<p>With reference to proposal 11(a), currently, paragraph 7 of the First Schedule provides for “enforcing his rights under the partnership agreement (unless those rights are to carry out management functions).” In a similar vein to current para 7 of the First Schedule, if a partnership agreement confers voting rights to the limited partners, the law should respect the contractual freedom and provide legal certainty to the investors that they are not at risk of losing their limited liability status if they exercise their right to vote. The proposal is consistent with the position in Hong Kong.</p> <p>With reference to proposal 11(b), fund LPs may have a fixed duration and limited partners of fund LPs, being investors, should have a say in whether the entire investment should end or continue. The proposal is consistent with the position in the UK and Hong Kong.</p> <p>With reference to proposal 11(c), expertise of the key personnel in the general partner is one factor that limited partners (of fund LPs) may take</p>



Item no.	Proposal to include the following additional activities to the Safe Harbour List	Reason for proposal
		into account in deciding whether to invest in the fund. The proposal is consistent with the position in the UK and Hong Kong.

**(c) Refinements to existing paragraphs of the First Schedule, proposed to apply to all limited partnerships**

Item no.	Current paragraph no. in the First Schedule	Current provision	Proposal	Reason for proposal
12	Para 2	Acting as an agent or employee of the limited partnership within the scope of the authority conferred by the partners.	To add a proviso that the role in para 2 of the First Schedule must not include carrying out management functions as an agent or employee.	The proposal is for clarity and to remove any ambiguity with the current wording “the scope of the authority conferred by the partners”.
13	Para 10(c)	Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the limited partnership including — (c) the creation, renewal, refinancing or discharge of an obligation by the limited partnership;	To include extension or variation of an obligation by the limited partnership in para 10(c) of the First Schedule.	The proposal is for clarity and completeness. The UK and Hong Kong make reference to “extension” and “variation”.
14	Para 10(g)	Voting on, or otherwise signifying approval or disapproval of any	To include waiver of term in para 10(g) of the First Schedule.	The proposal is for clarity and completeness. The proposal is

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		transaction or proposed transaction of the limited partnership including — (g) any amendment to the partnership agreement;		consistent with the position in the UK and Hong Kong.
15	Para 10(j)	Voting on, or otherwise signifying approval or disapproval of any transaction or proposed transaction of the limited partnership including — (j) the making of investments or the making of other determinations in connection with or concerning investments, including investments in any property, either directly or indirectly by the limited partnership;	To include disposal of investment in para 10(j) of the First Schedule.	The proposal is for clarity and completeness.