



## LEFT FIELD



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**Paul McLaughlin, a newly promoted Partner in Brodies' Funds Group and a named individual under the partnership law category in the independent legal directory Chambers & Partners, specialises in advising on the many legitimate applications of partnership entities, including LLPs and Scottish limited partnerships (SLPs).**

Private equity, real estate main fund structuring, carried interest vehicles, vehicles for indirect investment in high value real estate assets and / or acquisition – all are examples of scenarios and structures where the ever-versatile SLP can be found.

The ability (and requirement) to split the entity's management function from the investment interest, and the benefit of a vehicle that subsists independently of its partners, and is therefore able to contract as that separate entity, but doesn't attract a second, independent tax liability, continues to attract a broad spectrum of investors to the vehicle.

In July 2015 the Government consulted on possible changes to the existing statutory regime for SLPs, as well as English limited partnerships. The reforms proposed have now been implemented, and came into effect from April 2017.

This brings the regime for UK limited partnerships much more into line with those of other legal centres such as Delaware, the Cayman Islands and the Channel Islands, reducing administrative requirements and the cost of managing the vehicles, and enabling documentation to be simplified. Crucially, the reforms have not impacted on the nature of SLPs themselves, which have retained the key characteristics so highly valued by investors.

These changes will be applicable to any SLP that registers as a private fund limited partnership (PFLP), where it is a collective investment scheme for FSMA purposes (a CIS) or would be a CIS but for the availability of an applicable exemption.

In response to recent criticism of secrecy surrounding SLPs, the UK persons of significant control regime is being extended to cover SLPs and Scottish partnerships where the partners are corporate entities. How this will work in practice remains to be seen, given that there's no current need for a Scottish partnership to register any documentation at Companies House.

We frequently see SLPs performing a critical role in global group acquisition, financing and investment structures, and we see these changes as encouraging growth in transaction activity. **Click here** to read a more detailed analysis of the changes.

## PLATFORM

**How do we see the State of Scotland now? Hopefully there will be a respite from political elections for a good while, so that business markets can begin to adjust to the changes of the last few months and make a few investment decisions that might have been delayed.**

Our businesses have lived with uncertainty since the financial crisis. Many see opportunities in the changing market. With a deferral for now of more independence proposals, and with the UK Government more dependant on Scottish support, there is perhaps something of a breathing space that will allow Scottish businesses to concentrate on a growth agenda.

Of more concern recently has been the performance of the Scottish economy. However, the latest set of quarterly data encouragingly shows that Scotland has avoided going into a technical recession, with Q1 growth of 0.8%, outstripping the UK's growth of 0.2%. Business activity appears strong in a number of areas and we are continuing to grow our specialist services across the country. Production output is up, but construction activity contracted.

The Scottish think tank Reform Scotland has recently published a paper on the State of Scotland's economy.

It reports a slightly confusing picture, but puts this down to the lack of robust economic data measuring Scotland in comparison with other UK regions. So, whilst Scotland does not always compare economically with the UK as a whole, it is often the best, or one of the best, performing regions outside London and the South East of England. And Edinburgh and Aberdeen's GVA are amongst the top ten across the UK. Reform Scotland is keen to improve the quality of available data so that Scotland's progress can be accurately measured.

In addition, EY's Scotland Attractiveness Survey 2017 found that Scotland has continued to attract record numbers of inward investment projects. The total number last year, 122, exceeded the previous 10-year high of 119 in 2015. Over the past five years, Scotland has established itself as the UK's second most attractive destination for foreign investment behind London – underscoring the competitive performance of the Scottish economy.

So we remain confident about Scotland's fundamental economic strengths and prospects over the coming few years, whatever further political change there may be.

**Click here** to see Reform Scotland's paper.

**Michael Stoneham**

## HADRIAN'S WALL

**The maritime services sector in Scotland continues to prove itself as a significant and important industry. It is estimated to support 54,900 jobs, contributing £2.7 billion to the Scottish economy and generating just under £1 billion in tax revenues (Maritime UK figures for 2015)**

As we take back control of our fishing waters, concerns do exist regarding the effect on employment law, immigration, border and environmental controls. The complexities and effect of the National Minimum Wage – which may be applied to workers on non-UK flagged ships with a demonstrable jurisdictional link to the UK – increases pressure on operators.

Yet the fishing sector has been particularly buoyant in recent months, with around 15 new whitefish boats planned for the north-east coast of Scotland. There is also sustained confidence in the pelagic (open sea) sector, particularly in Shetland, where three new large pelagic vessels have been built or are on order, and with potential for more to follow in their wake. We expect these new boats (subject to quota and licence availability) to also create market opportunities through the sale and purchase of second hand vessels.

These factors ensure that lenders' appetite to finance and further support the sectors remains high, with vessel acquisition and/or vessel construction finance regarded as a key growth area for specialists operating across the banking sector itself, and with opportunities for those operators wishing to refinance an existing fleet.

# MARKET REPORTS

**Investment in Care Homes** – following our Platform piece on the Care Homes sector in Credo recently, the UK Competition and Markets Authority (CMA) has now published an update with the initial findings of its market study and outlining its concerns with the sector.

Prominent among concerns are the funding challenges faced by the sector. Low levels of profitability and low payments from local authorities and others for the services provided seem to make it very challenging to raise investment finance. There is said to be a funding gap, the difference between residents' fees and the cost of service provision, of £1.3 billion a year in the sector in England.

In Scotland the position is probably similar or worse. Some innovative financial structuring, possibly drawing on experience in the student residence accommodation sector, is clearly required here. **Click here** to read the CMA report.

**Transfers of Guarantees** – a recent Court of Session Outer House case has looked at the transfer of a personal guarantee of bank borrowings. Whilst the borrowings were stated to be assignable, the guarantee was silent on the point.

The issues considered were whether that silence implied a restriction on assignation, and whether the Scottish concept of *delectus personae* – meaning that the original lender was chosen specifically for their special talent or skills which could not be performed by anyone else – applied.

Happily for the transferees these issues were rejected. For an interesting discussion on these aspects plus the Scots law requirement of intimation of any assignation, see *Promontoria (Ram) Limited v John Moore* here

**Offshore Windfarm Projects** – Celebrations at Mainstream Renewable Power and other sponsors for the four large Scottish offshore projects were put on hold last week, as the RSPB announced that it was seeking permission to appeal to the UK Supreme Court against the Court of Session ruling against its judicial review challenge to the grant of planning permission for the projects.

Their concerns are for the puffins, gannets and kittiwakes that might be affected by the development. If permission to appeal is granted, there may be a further delay of six to 12 months in finally determining whether the projects can go ahead.

## Did You Know?

An Ipsos MORI survey on behalf of Brodies LLP found that, with just a year to go until the biggest shakeup of data protection law in 20 years, 25% of businesses and organisations in the UK were unaware of the new legislation and almost half had yet to start preparing for its introduction. To find out more about the General Data Protection Regulations contact Grant Campbell, Head of our Commercial Services Division, on 0131 656 0115 or at [grant.campbell@brodies.com](mailto:grant.campbell@brodies.com).

## LIFE BEYOND



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**Anna recently joined our Banking & Finance team in Glasgow from another Scottish firm. She has experience advising across the UK and internationally on corporate banking transactions, including acquisition and leveraged finance, funds finance, real estate investment and development finance, social housing finance and project finance.**

### - What keeps you busy outside work?

Most of my hobbies involve the outdoors, so whether on a hill walk, enjoying a bit of rock climbing or exploring a northern loch on my stand up paddle board, you will likely find me taking advantage of Scotland's beautiful scenery. I also practice Bikram yoga and enjoy keeping fit in general.

### - What are you passionate about?

I have a passion for our national drink – Scotch Whisky. It is a vast and fascinating subject and is very rewarding to...research! I am a bit of a whisky fanatic and so I enjoy touring distilleries, going to whisky festivals, events and tastings and developing my knowledge in the subject. I'm also a member of an all-female whisky club at Glasgow's famous watering hole, The Pot Still, which is a lot of fun.

### - If you weren't a lawyer what would you be?

Given the huge market and seemingly insatiable thirst for craft spirits, I would do my best to turn a passion into a career and start my own small distillery. After I manage to secure a croft in the north of Scotland and install a couple of copper stills for whisky, I would probably start producing a small batch gin to keep me busy and distracted from the resting casks until I had mature whisky that was ready to sell (and to taste!).

## KILTING CORNER

**Buy-to-let tenancies** – new legislation is to overhaul the form of tenancy for the private rental sector in Scotland, with short assured tenancies making way for a new modern form of private residential tenancy.

The Private Housing (Tenancies) (Scotland) Act 2016 is expected to come into force in December 2017 and will prevent landlord ending a tenancy purely because the specified term has expired – instead there will be 18 grounds for recovering possession (which includes recovery where the property is subject to a standard security and the lender requires the removal of the tenant to exercise its power of sale). New provisions restricting rent increases in 'rent pressure zones' also feature. Lenders to residential property portfolios would do well to review documentation and take advice in good time.

**Changes to Prescription** – following a Supreme Court ruling in 2014, the Scottish Law Commission has sought to clarify aspects of the law of prescription in Scotland with the publication of the Prescription (Scotland) Bill.

The time periods for claims in Scotland and England vary – essentially it's five years to bring a claim with a longstop of 20 years in Scotland (in England six or 12 years, with a 15 year longstop). In practice, we often see attempts to 'contract out' and shorten the 20 year longstop to correspond with English law – the new Bill makes it clear that won't wash. New provisions also cover how the five-year period may be extended, and when the prescriptive period commences. We await the publication of the updated Bill at some point over the summer.

**A 'right to light'?** – the student accommodation finance market remains buoyant in Scotland, and a recent Aberdeen planning appeal saw a relatively unusual decision made over the impact of the proposed development on neighbouring properties. Unlike in England, there's no automatic 'right to light' in Scotland, but it was felt by the Reporter that the development would impact on the light in adjacent flats, despite complying with the specified separation distance.

**Read more here**

Credo is the Latin root of credit and trust which emphasises the underlying credibility of the borrower's promise to repay; the foundation stone of our financial system. If you have any comments or questions on the content of Credo please email [michael.stoneham@brodies.com](mailto:michael.stoneham@brodies.com) or your regular Brodies contact.