2002 Journal for Juridical Science 27(2): 1-14

JJ Henning

The limited partnership review. Historical and comparative perspectives on the revival of a "commercial mongrel" in the United Kingdom

Summary

The United Kingdom limited partnership can be described as the statutory equivalent of the South African partnership *en commandite*, which was received from French law via Roman-Dutch law. Proposed in 1838 and eventually introduced in 1907, the limited partnership has not proved as popular as its proponents would have wished for. In fact, it has been described as a "commercial mongrel" and as "dismal failure", that was sunk "almost without trace" by the private company. Nevertheless, the limited partnership presently is a useful vehicle in the United Kingdom for investors who do not wish to take an active role in the management of their funds. It offers the investor privacy, as the accounts of the partnership are not generally disclosed. Like other partnerships, it also provides the benefit of fiscal transparency. On 13 September 2000 the Law Commission of England and Wales and the Scottish Law Commission released a comprehensive joint consultation paper envisaging a thorough review of the partnership law. Consequently, the Law Commissions completed a joint consultation paper on reforms of the Limited Partnership Act 1907 which was published in November 2001. In this contribution historical and comparative perspectives are given on the proposals contained in the second joint consultation paper.

Die hervorming van beperkte vennootskappe. Historiese en vergelykende perspektiewe op die herlewing van 'n "commercial mongrel" in die Verenigde Koninkryk

Die Engelse beperkte vennootskap kan beskou word as die statutêre eweknie van die Suid-Afrikaanse vennootskap *en commandite*, wat geresepieer is uit die Franse reg via die Romeins-Hollandse reg. Reeds voorgestel in 1838 en eventueel eers ingevoer in 1907, het die beperkte vennootskap nie die gewildheid verwerf as waarvoor sy voorstanders gehoop het nie. Tewens, dit is al beskryf as 'n "kommersiële baster" en as 'n "volslae mislukking", wat so die onderspit gedelf het teen die private maatskappy dat dit in die vergetelheid verdwyn het. Desnieteenstaande verskaf die beperkte vennootskap tans 'n baie bruikbare ondernemingsvorm in die Verenigde Koninkryk aan beleggers wat nie aktief wil deelneem aan die bestuur van hul fondse nie. Dit bied privaatheid aan die belegger aangesien die state van 'n beperkte vennootskap in die algemeen nie openbaar gemaak word nie. Soos ander vennootskappe, bied dit ook die voordeel van belastingdeursigtigheid. Op 13 September 2000 het die Law Commission of England and Wales en die Scottish Law Commission 'n omvattende gesamentlike konsultasiedokument vrygestel wat 'n omvattende hersiening van die vennootskapreg in die vooruitsig stel. Daaropvolgend het die twee Law Commissions 'n gesamentlike konsultasiedokument voltooi oor die hersiening van die Limited Partnership Act 1907. Dit is gepubliseer gedurende November 2001. In hierdie bydrae word beide regshistoriese en regsvergelykende perspecktiewe verskaf op die voorstelle vervat in die tweede gesamentlike konsultasiedokument.

Prof JJ Henning, Dean of the Faculty of Law, University of the Free State, PO Box 339, Bloemfontein.

1. Introduction

Some academic writers still refer to the partnership as one of the most important forms of enterprise in the business world,[1] but it is also clear that the unincorporated partnership has long lost pre-eminence as a vehicle for associated commercial enterprise. Hence the predisposition to view the subject of partnership in the same light as Ebenezer Scrooge in Dickens *A Cristmas Carol* regarded his famous partner Jacob Marley, that is as an unnecessary reminder of times past.[2] If this view is tenable, then surely the comparative tendency must be to consider the topic of limited partnership (a "commercial mongrel" and "dismal failure", that was sunk "almost without trace" by the private company)[3] as the very incarnation of times best forgotten. In the same vein, the present reform initiatives in the United Kingdom may against this background very well be perceived as the "Ghosts of Christmases Past, Present and Yet To Come" all rolled into one.

2. The reform initiatives

On 13 September 2000 the Law Commission of England and Wales and the Scottish Law Commission released a comprehensive joint consultation paper (the "first joint consultation paper") envisaging a "thorough shake-up" of the Partnership Act 1890.[4] The news release "Partnership law for the new millennium" evidences the intention of comprehensive modernisation. Both Commissions emphasised that while attention has recently been focussed on the reform of company law it is no less important that partnership law should clearly and sufficiently address the needs and current practices of today's market. The economic importance of partnership should not be underestimated. There are almost as many business partnerships as there are trading companies in the United Kingdom, with a combined turnover of £151,523 million and at least 2.77 million employees in 1997. The Commissions address the three main problems with existing partnership law suggesting proposals for reform, namely the legal nature of the firm, unnecessary closure of business and mechanisms for dissolution of solvent partnerships.

In Scotland the firm is a legal person distinct from the partners of whom it is composed. English partnership law mostly treats the firm, including the limited partnership,[5] as merely an aggregate of individuals. It ignores the firm and looks to the partners composing it. The Commissions propose that the firm should become an entity also under English partnership law which can enter into contracts, undertake obligations and own property in its own right. This would involve the firm continuing as an entity notwithstanding changes in membership.

1 See Cilliers and Benade *et al* 2000:4.
2 Morse 1998:xi.
3 Morse 1998:22. See also Banks 1995:859; Twomey 2000:741: Blackett-Ord 1997:501; Drake 1983:340-341.
4 Law Commission and Scottish Law Commission 2000:3.
5 See *In re Barnard* [1932] 1 Ch 269; Burgess and Morse 1980:13.

The Commissions refer to the long-term fundamental review of company law which was launched by the United Kingdom Department of Trade and Industry in March 1998 with the aim of developing a simple, modern, efficient and cost effective framework for carrying out business activity in Britain for the twenty-first century. An independent Steering Group formed to oversee the management of the Review presented its Final Report to the Secretary of State on 26 July 2001. The Department will consult on draft legislation once it has examined the recommendations of the Final Report in detail. It should be patently obvious that a seamless match between the two initiatives has much recommend itself for.

A consultation document recommending the removal of the twenty partner limit has been released by the United Kingdom Department of Trade and Industry on 4 April 2001.[6] A similar recommendation is to be found in the joint consultation paper. A document summarising the responses to the consultation was published by the Department on 8 November 2001. The Minister for Competition and Consumers confirmed the intention to remove the limit by means of Regulatory Reform Order under the Regulatory Reform Act 2001.

The Law Commissions completed a joint consultation paper on reforms to the Limited Partnership Act 1907 on 28 September 2001 (the "second joint consultation paper") which was published in November 2001.[7] It is with this development that this note is primarily concerned.

3. Historical perspectives

The United Kingdom was much slower than many other countries to introduce a form of a partnership in which some of the partners could have limited liability. In fact as early as 1673 in France, Louis XIV's *Ordonnance du commerce*[8] devoted no less than fourteen sections to the regulation of the *société* (partnership) *en commandite*, while Sir Frederick Pollock went so far in 1882 as to observe that "the institution of partnership *en commandite*, or limited partnership …, is unknown in the United Kingdom, and in these kingdoms alone, ….. , among all the civilised countries of the world."[9]

This form of partnership can trace its roots as far back as the Italian *commenda* of the Middle Ages, which was in substance an arrangement by which an investor entrusted capital to a trader for employment in mercantile enterprises on the understanding that the investor, while not in name a party to the enterprise and though entitled to a share of the profits, would not be liable for losses beyond the amount of his investment. This concept of limiting the liability of non-managing investors spread from Italy into French commercial law, emerging as the commanditarian partnership in which the

6 Department of Trade and Industry 2001:2.
7 Law Commission and Scottish Law Commission 2001:1.
8 Often referred to as Colbert's *Code Marchand*.
9 Pollock 1882:100. See also Pollock 1877:121.

dormant partners finance the business and are liable only to the extent of their investment in the partnership. The active partners are jointly and severally liable for all of the obligations of the partnership.[10]

By using the medieval *commenda*, the investor could limit the risk of personal liability for business debts as well as the risk of sharing in losses beyond that of the capital, but not of the capital itself. The risk of losing the capital had to be borne by the *commendator* and precisely this risk justified his participation in the profit. By analogy the distinction between loan and partnership, was founded in the placement of the risk. In the case of loan the risk was borne by the lender, while in the case of partnership it was borne by the partner contributing the capital. The requirement of risk sharing as an essential element of partnership rendered this form of investment unsuitable to the moneylender, who was interested primarily in the safety of his principal and in a fixed return on his capital. Not only was the risk of the loss of both unacceptable but particularly also the solidary liability for partnership debts and obligations attendant on his membership of a commercial partnership. The *commenda* afforded some protection to investors, but not enough. Another solution[11] had to be found.

This was eventually provided by the triple contract (*contractus trinius*), in terms of which an investor could protect his investment by insuring the principal against loss, which was legal, and assure a fixed rate of return by selling a future uncertain profit for a certain definite return, which was also legal. Under this construction the essential element in partnership, participation in risk, had in fact been contracted away. It was in effect nothing more than an agreement with all the implications of a modern loan transaction. When the strict prohibition on usury came to an end, the concept that the person advancing money to a business for a share in the profit should be considered as a partner and not a mere creditor, had by then become firmly enshrined in English jurisprudence. It clouded the distinction between loan and partnership and negatively influenced subsequent remedial partnership legislation.[12]

The *Report on Partnership Law* by Bellenden Ker[13] in 1837 referred particularly to the expedience of introducing the concept of the commanditarian partnership on the French model, but the report was pigeon-holed. Later developments show some confusion between the introduction of this kind of limited liability for certain partners and attempts to mitigate the implications of the usury inspired construction, namely that any person who shared in the profits of the partnership was considered to be a partner and so liable for any debts of the partnership.[14] Thus the Select Committee on the Law of Partnership of 1851 considered the issue of

10 Henning and Delport 1997:186-187.
11 See Henning 2000:40-48.
12 See Henning 2000:48-54.
13 Kerr 1837:439.
14 *Grace v. Smith* (1775) 2 Wm. Bl. 997, 96 E.R. 587. See also e.g *Canada Deposit Insurance Corporation v Canadian Commercial Bank* [1992] 3 S.C.R. 558.

limited liability in a partnership context but recommended that this question be referred to a Royal Commission of adequate legal and commercial knowledge. As a result the Commission on the Mercantile Laws and on the Law of Partnership of 1854 was appointed. The Commission failed to reach unanimity. A bare majority opposed the 1851 proposal that a person should be able to lend money to a partnership, at an interest rate related to its profits, without incurring partnership liability. This was followed by an unanimous resolution of the House of Commons that the law of partnership should be amended by the introduction of limited liability for profit-sharing contributors of capital. In the next session of Parliament, the Partnership Amendment Bill reaffirmed the proposal of the 1851 Committee to allow profit-sharing loans to partnerships without the lender incurring the liability of a partner. It progressed to a second reading, but was proceeded with no further, despite the earlier resolution of the House. In 1856, a similar Partnership Amendment Bill was tabled. The Bill had a third reading in the House of Commons, but was not implemented.[15] Relief for profit-sharing lenders was at last introduced by the the 1865 Act to Amend the Law of Partnership, also known as "Bovill's Act",[16] but this did not imply limited liability for partners in the sense of the commanditarian partnership favourably referred to by Ker in 1837. This limitation of liability for partners excluded from management functions was finally only attained in 1907 with the introduction of the Limited Partnership Act, the very same year that the private company first made its appearance in English companies legislation.

4. Limited liability partnerships

A limited partnership consists of one or more general partners liable for all the debts and obligations of the firm and who alone are entitled to manage the firm's affairs, and one of more limited partners whose liability for the debts and obligations of the firm is limited in amount but who are excluded from all management functions.

The limited partnership performs a different role from that of the limited liability partnership formed under the Limited Liability Partnerships Act 2000. The latter enables partners who are actively involved in the business of their partnership, to limit their liability for the partnership's debts and obligations. Although it referred to as a partnership, the statutory limited liability partnership, unlike the limited partnership, is not subject to the provisions of the Partnership Act 1890.

5. Limited liability limited partnerships

The limited liability partnership legislation of some United States jurisdictions allow a limited partnership to register as a limited liability partnership. The form of business association that results from such a

15 For detailed discussion see Henning and Wandrag 1997:150-157.
16 28 & 29 Vict. c. 86.

registration is referred to as a limited liability limited partnership.[17] Whether this structure will eventually also wend its way into the United Kingdom, remains to be seen.

6. Limited partnerships in context

The limited partnership is a useful vehicle in the United Kingdom for investors who do not wish to take an active role in the management of their funds. They may use it to create an investment fund under the control of a general partner who alone has unlimited liability for the partnership's obligations. The limited partner is only liable to the extent of his contributions, provided he does not take part in the management of the partnership business. The limited partnership offers the investor privacy, as the accounts of the partnership are not generally disclosed. Like other partnerships, it also provides the benefit of fiscal transparency. The partnership is not treated as an entity distinct from its members for the purpose of income tax or capital gains tax.

Over the last ten years, limited partnerships have been used increasingly for property investment in the United Kingdom. The tax-transparent structure of the limited partnership makes it an attractive vehicle for institutional investors, such as pension funds or insurance companies, which are partially or wholly tax-exempt. It enables them to invest jointly with tax-paying entities, such as property companies, without losing their tax advantages. The same features have made limited partnerships suitable for use in urban regeneration projects, bringing together public authorities, institutional investors and property developers.

The limited partnership has not proved as popular as its proponents would have wished for. In 2001 there were 8,898 limited partnerships registered in England and Wales of which Companies House estimates approximately 3,000 to 4,000 are still functioning. Companies House for Scotland estimates that there are 3,555 limited partnerships in Scotland and that most of them are still functioning. The large number of functioning partnerships in Scotland may be explained by the use of limited partnerships in agricultural tenancies. The use of a partnership which the landlord as limited partner can terminate, for example on the death of the general partner, is a device by which parties can avoid the security of tenure provisions of legislation relating to Scottish agricultural holdings. The number of limited partnerships is very small when compared with the 684,645 partnerships and 738,325 trading companies. Nevertheless, there has been an increase in the use of limited partnerships in recent years as vehicles for venture capital investment.

On 26 May 1987 the United Kingdom Inland Revenue and the Department of Trade and Industry approved a statement on the use of limited partnerships as a vehicle for venture capital investment funds. Since then, limited partnerships have become the standard structure used by venture capitalists not only for United Kingdom funds but also for European funds.

17 Bromberg and Ribstein 2001:157; Hillman *et al* 1996:349.

7. Comparative perspectives

The venture capital industry in the United Kingdom is the largest and most developed in Europe, but other European jurisdictions are developing innovative limited partnership structures *inter alia* in a bid to increase their share of the European venture capital industry.

Here Germany can conveniently serve as an example. The hybrid corporate limited partnership, the *Gmbh & Co KG*, that basically is a limited partnership with a private company as general partner and the limited partners as shareholders in the private company, has for a variety of reasons attained popularity as a vehicle for small and medium business enterprises. The statistics show that numerically and as far as gross turnover are concerned the *Gmbh & Co KG* is only outstripped by the private company proper.[18]

A newer structure is the *GmbH & Co KG aA*,[19] a limited partnership with freely transferable shares where the general partner is a private company, that is a *GmbH*. The legality of this construction was put beyond doubt by a decision of the *Bundesgerichtshof* of 24 February 1997,[20] in which it was decided that a juristic person could be the general partner of a *Kommanditgesellschaft auf Aktien*.[21] This construction is preferred to a public company[22] for listing on the stock exchange and as a vehicle for raising venture capital for various reasons, for example: the influence of outsider shareholders[23] may be limited; duties of disclosure may be narrower; the impact of workers participation in the management organs may be lightened; and the effect of corporate double taxation may be limited.[24]

In addition, several common law jurisdictions have given a lead in developing modern codes for limited partnerships. The most detailed is probably the Delaware Revised Uniform Limited Partnership Act. This is an expanded version of the model prepared by the National Conference of Commissioners on Uniform State Laws, the Uniform Limited Partnership Act 1976, with 1985 amendments. A review of the Uniform Limited Partnership Act is currently under way. More direct assistance is likely to be gained from legislation in jurisdictions with closer links to the UK, and from regimes which, like the 1907 Act, have roots in the 1890 Act. Useful legislation includes the Limited Partnerships (Jersey) Law 1994, the Limited Partnerships (Guernsey) Law 1995 to 1997, the Ontario Limited Partnerships Act 1990, and the Partnerships Act 1892 (New South Wales) as amended by the Partnership (Limited Partnership) Amendment Act 1991.

---

18 Sudhoff 1975:37-47; Klunzinger 1991:89-91.
19 *KG aA* is the abbreviation for *Kommanditgesellschaft auf Aktien*.
20 BGHZ 134, S 393; *Gmbh-Rundschau* 1997:595.
21 Barsch and Blinn 2002:1-2.
22 *Aktiengesellschaft*.
23 Shareholders that are not members of, for instance, a particular family or other narrow grouping.
24 See in general Erman 1965:277; Stehle and Stehle 1974:126; Sudhoff 1975:32-40; Hesselmann 1980:3-28; Hueck 1985:707; Model 1979:185; Giesen 1986:24; Albach 1989:63; Von Dellinghausen 1991:217; Heid 1984:18-34; Henze 1972:7-15.

8. Proposals for reform

Unlike the Partnership Act 1890, the Limited Partnership Act 1907 has not been regarded as a model of draftsmanship.[25] The source of much of the criticism is the fact that the 1907 Act creates a new type of partner, the limited partner, but applies many of the provisions of the 1890 Act to that partner. This was done, without due effort having being been made to weave those differing provisions together to produce a coherent body of law suitable for a limited partnership.[26]

In the second joint consultation paper possible reforms are considered, both in order to update the law and to remove doubts which have caused concern to users of this business vehicle and their advisers. This paper is comprised of six parts.

Part II provides a brief overview of the existing law relating to limited partnerships.

Part VI lists the consultation questions and provisional proposals.

Part III discusses the formal requirements for establishing and operating a limited partnership and addresses the following matters: whether a body corporate can be a general partner; whether a general partner can also be a limited partner; whether the term "business" includes investment activities; the requirements for registration; what link with the United Kingdom should be required for a limited partnership registered in the United Kingdom; the conclusiveness of the certificate of registration; the names of limited partnerships (including disclosure of status as a limited partnership); and the consequences of default.

Part IV examines and makes provisional proposals on the liability and role of the limited partner and the possibility of withdrawal of capital. The matters addressed in this Part include the following: the scope of protection for a limited partner; what constitutes "management", and whether there should be a statutory list of "safe" activities; capital withdrawal; duration of liability after withdrawal; and agency.

Part V discusses the rights and obligations of partners between themselves and addresses matters requiring consent of limited partners; fiduciary duties; share of profits and losses; retirement and assignment/assignation; and dissolution and winding up.

Inter alia, the Commissions consulted on whether the description "limited partnership" should continue to be used, or whether it should be replaced by an alternative such an "mixed partnership" or "investment partnership". The majority view was that the description "limited partnership" should be maintained as it is well established and understood. The Comissions propose that the limited partnership's status should be disclosed in its name and on documents with the use of a suitable suffix. The model in the Limited Liability

---

25 Drake 1983:341.

26 Twomey 2000:742.

Partnership Act 2000 should be followed, which would provide a choice for limited partnerships between either “LP”, “lp” or “Limited Partnership”. Whilst there is a risk of possible confusion between “LLP” and “LP” the distinction would be clear to those who deal directly with limited partnerships.[27]

Limited partnerships must be registered, failing which every limited partner is deemed to be a general partner. Registration enables third parties to find out about the status of a partnership, which partners are limited partners, and the level of their contribution. While there is no need to include further information on the register, a case could be made for reducing the registration requirements, balancing the usefulness of the requirements against their administrative burden. For example, one of the requirements is the registration of a “principal place of business”.[28] This provision contrasts with those in other jurisdictions, which generally require a registered office. Accordingly the Commissions propose that the requirement for a registered place of business should be abolished and replaced with one for a registered office.

The Registrar of Companies does not have the power to strike defunct limited partnerships off the register. In order to maintain an up to date register, the Commissions propose that the Registrar of Companies should have the power to de-register limited partnerships in the same circumstances as those applying to companies, and that the general partner should be fully responsible for complying with the registration requirements.

One of the principal issues the Commissions identify is uncertainty as to what activities are open to limited partners without involving themselves in “management” and subsequently losing their limited liability status. The consultation paper notes that the lack of clarity as to what activities short of management are permissible for limited partners is considered a major defect. It is clearly important that an investor should know the limits of his permitted participation in the firms’ business. It is desirable to ascertain which categories of decision are permissible to limited partners without threatening their protection from liability and that these should be matters which clearly fall outside the ambit of “ordinary” matters. Clear guidance should be provided on a limited partner’s right to advise the general partners on the firm’s business, without taking part in management.[29]

Attention should also be drawn to the recommendation of separate personality for partnerships in the first joint consultation document. This recommendation is also applicable to limited partnerships. It is interesting to note that due to their separate personality, Scottish limited partnerships have also been used as vehicles for investment in Lloyds since 1997. Guernsey has recently amended its limited partnership law to give partners in a limited partnership the right to elect that the partnership shall have legal personality. The reason for giving the option was to allow such partnerships to be used for

27 See Owen 2002:3.
28 *Limited Partnership Act*:section 8.
29 See Owen 2002:8.

carrying on business as underwriting members of Lloyds, while preserving the option of a partnership without legal personality for certain other investment vehicles.

9. South African perspectives

As mentioned above, the *commenda* concept of limiting the liability of non-managing investors spread from Italy into French commercial law, emerging as the *société en commandite*. From France it was incorporated into Roman-Dutch law under its French name.[30]

Apart from various statutory provisions dealing *ad hoc* with particular matters, the South African law of partnership consists of common-law, derived mainly from Roman-Dutch law.[31] In Roman-Dutch law various kinds of partnership were distinguished. One of the primary divisions was between universal and particular partnerships. Particular partnerships again were of many kinds, for instance, commercial or trading partnerships. The latter included partnerships trading in the name of all the partners in common, namely under a collective name or firm, partnerships *en commandite*, as well as silent partnerships.[32]

South African law accommodates partnerships of all sorts satisfying the applicable requirements. Various kinds and conditions of partners and partnership are recognized, but the sharpest distinction is between ordinary and extraordinary partnerships.[33] Prior to 1976 three kinds of extraordinary partnerships could be established, namely the partnership *en commandite*, the silent partnership and the limited partnership consisting of general partners and special partners. The last kind was introduced by statute in the Cape Province and Natal during the nineteenth century. The Cape Special Partnerships Limited Liability Act 1861 and the Natal Special Partnerships Limited Liability Act of 1864, were not taken over from British legislation. Indeed, the Limited Partnership Act was only introduced in Britain with effect from 1 January 1908. These statutes were in all probability based on the earlier Irish and American state legislation, inspired by the French *Code de Commerce* of 1807,[34] which was in its turn preceded by Louis XIV's *Ordonnance du commerce*[35] of 1673.[36] Owing to the reception of the partnership *en commandite*, from French law via Roman-Dutch law, the Natal and Cape measures proved to be unnecessary and unpopular. They were eventually repealed by the Pre-Union Act Amendment Act 36 of 1976.

30 Henning and Delport 1997:187-188.
31 Henning and Delport 1997:186.
32 Henning and Delport 1997:190.
33 Henning and Delport 1997:190-193.
34 Sections 23-28: Société *en commandite*.
35 Also referred to as Colbert's *Code Marchand*.
36 Title 4 sections 1-14: *Des Sociétés*.

Commanditarian partners are not liable to creditors of the partnership, but only to their co-partners. The mere fact that outsiders become aware or are informed of the nature and terms of the partnership does not render them liable to partnership creditors. They will lose their protection if they have been held out to be or have acted as ordinary partners. It should be noted that the doctrine of the undisclosed principal does not apply to this type of partnership and thus cannot be utilized by a partnership creditor to render a commanditarian partner liable for partnership debts.[37]

Commanditarian partners may not participate actively in the business of the partnership. It is clear that mere interference *per se* in the partnership business, not amounting to holding out or acting as ordinary partners, does not render them liable to partnership creditors. However, the extent to which commanditarian partners may be involved in the partnership business without losing their privileged status is not free from all doubt.[38] Particularly in this context the analysis and recommendations contained in Part IV of the second joint consultation paper could provide valuable guidance for pro-active reform.

Joint ventures have become an important feature of commercial life, particularly since South Africa's re-entry into the international field. There are many situations in which it may be desirable for a company or corporation to join a partnership. Some of these include where two companies combine their resources to exploit an idea or property through a joint venture, the use of a corporate general partner of a partnership *en commandite* in order to obtain the tax advantages of partnership as well as limited liability.[39] One of the main relative advantages of the South African partnership *en commandite* to its Continental and Anglo-American equivalents, is that it need not be registered. In fact, it has been suggested that there is no apparent reason why a partnerships *en commandite* cannot be established otherwise than by express agreement.[40] This informality and adaptability, may very well make it a more attractive vehicle for venture capitalists than it Continental or Anglo-American equivalents, which all require formal registration for the limited liability shield to be operative.

In a press statement released in February 1997 on behalf of the chairperson of the SAC the reform of South African entrepreneurial law within the framework of five principal statutes was stated as one of the main priorities on its programme. One of the statutes "to be drafted as soon as possible", was a new Unincorporated Business Enterprises Act dealing

37 *Eaton and Louw v Arcade Properties (Pty) Ltd* 1961 4 SA 233 (T).

38 E.g. in Roman-Dutch law a partnership *en commandite* could validly be contracted on the condition that the managing partner, in carrying on the affairs of the partnership, avails himself of the advice and consent of the commanditarian partner. It has, however, been stated that a clause in a partnership agreement that no risks shall be undertaken on account of the partnership unless with the consent of the partners, completely removes the partnership from the category of an *en commandite* partnership. See further Henning and Delport 1997:201.

39 See further Klopper 1993:71-83.

40 Henning and Delport 1997:203 note 33. Cf *Ally v Dinath* 1984 (2) SA 451(T).

comprehensively with "the law relating to partnerships". Although there has been no consequential legislative activity during the last five years, hope springs eternal that the law of partnership will have its day in the sun under South African skies.

The reports on the review of United Kingdom partnership and limited partnership law deserves the serious and urgent attention of those wishing to make a meaningful contribution to the very necessary modernisation of South African partnership law.

10. Conclusions

The Centre for Corporate and Partnership Law of the Institute of Advanced Legal Studies arranged a conference on the Limited Partnership Joint Consultation Paper in London on 11 April this year, during which the curtain was raised to some extent on a number of developments that could be expected. This includes the replacement of the Partnership Act 1890 and the Limited Partnership Act 1907 with a concise code capable of standing the test of time, which will "not be affected by changes in the law in other areas or by changes in the economic climate" and which will respect the qualities of the partnership as a flexible and informal business vehicle. The intention is that the proposed reforms to the limited partnership will create a "simplified, modern business vehicle which will help maintain the United Kingdom's leading position in the increasingly competitive field of venture capitalism".[41] This admirable objective surely merits support, proving that the so-called "commercial mongrel" is alive and well and living in the United Kingdom.

41 Owen 2002:8.

Bibliography

ALBACH W
1989. *Die Einmanngrundung der GmbH*. Bonn: Rheinischen Friedrich-Wilhelms-Universität.

BANKS RC
1995. *Lindley & Banks on partnership*. London: Sweet & Maxwell.

BARSCH AND BLINN RECHTSANWÄLTE
2002. *Die Vorteile der neuen GmbH & Co KG aA. http://www.rechtline.de/Rechtsberatung/Sonstige/Wirtschaft/GmbH_Co-KgaA.html.* Downloaded 7/24/02.

BLACKETT-ORD M
1997. *Partnership*. London: Butterworths.

BROMBERG AR AND RIBSTEIN LE
2001. *On partnership*. New York: Aspen Law and Business.

BURGESS R AND MORSE G
1980. *Partnership law and practice*. London: Sweet & Maxwell.

CILLIERS HS AND BENADE HJ (*et al*)
2000. *Corporate Law*. Durban: Butterworths.

DEPARTMENT OF TRADE AND INDUSTRY (UNITED KINGDOM)
2001. *Removing the 20 partner limit*. Consultation document. London: HMSO.

DRAKE CD
1983. *Law of partnership*. London: Sweet & Maxwell.

ERMAN W
1965. *"Verwaltung der Rechte eines Kommanditisten durch einer persönlich haftenden Gesellschafter der Kommanditgesellschaft"*. Festschrift für Hans Carl Nipperdey. Berlin: Beck.

GIESEN W
1986. *Die Gmbh & Co KG als rechtsform der Kooperation*. Münster: Westfälischen Wilhelms- Universität.

HEID P
1984. *Mehrheitsbeschluss und Inhaltskontrolle als Instrumentarien de Kapitalanlegerschutzes in der Publikums-Gmbh & Co KG*. Marburg: Schönborn.

HENNING JJ
2000. "Aspects of the law of partnership and the usury doctrine in historical perspective". *Theological Forum*: 40-54.

HENNING JJ AND WANDRAG MS
1997. Limited companies and limited partnerships in English law — a historical watershed. *Journal for Juridical Science* 22(1):150-157.

HENNING JJ AND DELPORT HJ
1997. "Partnership". *The law of South Africa* (First reissue). Durban: Butterworths.

HENZE M
1972. *Die Gmbh & Co Kommanditgesellschaft*. Stuttgart: Muth'sche.

HESSELMANN M
1980. *Handbuch der Gmbh & Co*. Köln: Otto Schmidt.

HILLMAN RW, VESTAL AW AND WEIDNER DJ
2002. *Revised Uniform Partnership Act*. New York: West Group.

HUECK G
1985. *Gmbh-Gesetz Kommentar*. München: Beck.

KER B
1837. *Report on the law of partnership*. British Parliamentary Papers vol XLIV. London.

KLOPPER G
1993. Die aanwending van die vennootskap *en commandite* as kapitaalvoorsieningskema vir beslote korporasies. *Mededelings van die Sentrum vir Ondernemingsreg*. Bloemfontein: Universiteit van die Vrystaat.

KLUNZINGER E
1991. *Grundzüge des Gesellschafts-rechts*. Mûnchen: Vahlen.

MODEL O
1979. *Gesellschaft mit beschrankter Haftung oder Kommanditgesell-schaft?* Köln: Otto Schmidt.

MORSE G
1998. *Partnership law*. London: Blackstone.

LAW COMMISSION AND SCOTTISH LAW COMMISSION
2000. *Partnership Law. A joint con-sultation paper*. London: HMSO.

2001. *Limited Partnerships Act 1907. A joint consultation paper*. London: HMSO.

OWEN LM
2002. *An overview of limited part-nership and partnership law reform*. Unpublished paper presented at the Conference on Limited Partnership Reform on 11th April. London: Institute of Advanced Legal Studies.

POLLOCK F
1877. *A digest of the law of part-nership*. London: Stevens.

1882. *Essays on jurisprudence and ethics*. London: Stevens.

STEHLE H AND STEHLE A
1974. *Die Gesellschaften*. Stuttgart: Boorberg.

SUDHOFF H
1975. *Der Gesellscaftsvertrag der Gmbh & Co*. München: Beck.

TWOMEY M
2000. *Partnership law*. Dublin: Butterworths.

VON DELLINGHAUSEN R
1991. *Innere Strukturen der Gmbh & Co KG*. Munster: Westfälischen Wilhelms-Universität.