

LIMITED LIABILITY PARTNERSHIPS

Nature of LLP

A limited liability partnership (usually called an “LLP”) is formed under the Limited Liability Partnership Act in England and Wales. It has much in common with a company. It is deemed to be a separate legal entity from its members. This has the important consequence that the members are not liable for the debts and obligation on the LLP, unless they guarantee them or give some equivalent undertaking.

Unlike the case with a company, the LLP itself is not taxed. The partners are taxed individually on the profits and gains of the LLP’s business. This removes the double taxation to which a company is subject. A company itself is taxed on its business profits and on its gains and its individual shareholders are taxed on dividend income received or capital distributed upon a winding up from the company.

Formation and Name

An LLP is formed by following certain procedures laid down in the LLP Act. A minimum of two members is required. There is no maximum number or numbers. An LLP may continue for ever. An LLP must carry on a lawful business for the purpose of profit.

The rules in relation to LLP names are much the same as those for companies. See our separate note in relation to names. For any LLP whose registered office is situate in England, Wales or Scotland there is a choice of a suffix which must be used. The phrase “limited liability partnership”, “LLP” or “llp” may be used. These letters must be used at the end. There is a Welsh equivalent which may be used. It is possible to change an LLP’s name by filing certain documentation.

The LLP’s name must appear on all business letters, notices, official publications, cheques, orders, invoices, receipts, letters of credits and bills. Non-compliance is an

offence. All business letters and orders and forms must contain the LLP's name, place of registration, registered number, registered office and the abbreviation used.

Registration and Capital

A Limited Liability Partnership must register with Companies House. LLP's partners' liability for LLP debts is limited to the amount they contribute to the partnership, which may be a nominal amount. If they withdraw the contributed amount however, they may be liable to the extent of the withdrawal, if the partnership later becomes insolvent.

There must be at least two members of an LLP. The members of the LLP normally share in the responsibility of running the business and share the profits or losses it makes. However, exactly how they define the rights and responsibilities, depends on the LLP partnership agreement or on what the legislation provides, if there is none.

An LLP partnership agreement is desirable and should detail the amount of capital each partner should contribute, sharing of profits and loss, working arrangements, changes etc. It is possible to have a LLP without an LLP partnership agreement. However, certain default rules will take effect (set out in the Limited Liability Partnership Act 2000) which may not offer appropriate solutions for the particular circumstances.

Members / Partners

An LLP has members and designated members. The initial members are those who subscribe to be members on formation. Other persons can agree to join, by becoming members and making the requisite return. Anybody may be a member of an LLP, including a company or another LLP.

Members will not automatically be employees but they may in fact be employees. A member of an LLP is an agent of the LLP. As an agent, it owes duties to take care and act honestly, not take secret profits and avoid conflict of interest. There is a duty of good faith between LLP members in the same way as between partners.

A member of an LLP is presumed to have authority to bind the LLP by his actions and words. The onus is on the LLP to limit a member's authority. An LLP is not bound by its member's actions, if certain conditions are satisfied. A former member of an LLP can still bind the LLP unless the third party has notice that the individual has ceased to be a member of the LLP or notice of the cessation has been delivered to the Registrar.

It is optional for an LLP to have a designated member. A designated member can be a person or a company. A designated member may be given certain tasks and functions under LLP legislation or under agreement. LLP Legislation designates certain administrative tasks for the designated member. These include such matters as signing accounts, making returns, fixing auditor's remuneration and a number of other matters.

It is possible to re-designate individuals. A change in designation must be filed. Details of appointments and designations must be filed in Companies House.

Taxation

An LLP, unlike a company, is not separately taxed to its members/partners. Tax law "looks through" the LLP and taxes the partners as if they were individual persons in business. It is therefore said to be "fiscally transparent".

Members of the LLP are self employed and must include details of their profits in their own individual self assessment tax returns. The LLP itself may need to register for VAT. The LLP it is not subject to corporation tax. The LLP must register for PAYE and pay income tax and National Insurance contributions for its employees.

LLPs must make a partnership tax return. This must include a statement stating how profits and losses have been divided. As with a general partnership one nominated member must return it on behalf of the partnership.

Winding-Up

There are provisions for winding up of an LLP which are broadly equivalent to those applicable for companies. A liquidator is appointed and much of the procedures are the



same as for winding up a company. There is also provision for winding up by a Court. Many of the provisions applicable on the winding up of a company are also applicable to winding up of an LLP.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

© Lavelle Coleman 2009