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## **BUSINESS BRIEFING**

# **Limited Liability Partnerships (LLP)**

### **Introduction**

Limited Liability Partnerships have been available since 6 April 2001.

They give an extra option to the entrepreneur, choosing a business structure, who was traditionally faced with trading as a sole trader, as a limited liability company or as a partnership.

### **What are they?**

An LLP is a business with limited liability and its own separate legal personality like a company. Companies exist unaffected by changes in shareholders and an LLP will be similarly unaffected by changes in the identity of its members.

LLPs are similar to companies in offering limited liability but have the organisational flexibility of a partnership and are taxed as one. Perhaps they offer the best of both worlds?

### **Can members be personally liable?**

The liability of the LLP itself will be unlimited (just like a company), but the liability of the members will be limited, and so their personal assets protected. Members can, in certain circumstances, be required to repay money to the LLP they have withdrawn in the two years preceding any insolvency, or if a member of an LLP assumes a personal duty and special relationship to a third party dealing with the LLP, they can still be held personally liable for the advice they give or if they are negligent. However, unlike the traditional partnerships, a member's personal assets will be protected in the event of a law suit.

Designated members can still be liable in certain circumstances to default fines and other penalties in the same way as directors and secretary who are office holders with a company.

### **What is the difference between a member and a designated member?**

With the agreement of other members, a member may become a designated member at any time. Designated members have the same rights and duties towards the limited liability partnership as any other member. These mutual rights and duties are governed by the Limited Liability Partnership Agreement and the general law. However, the law also places extra responsibilities on designated members, and in particular designated members are responsible for:

- Appointing an auditor (if one is needed).
- Signing the accounts on behalf of members.
- Delivering the accounts to the Registrar.
- Notifying the Registrar of any membership changes or change to the registered office address or name of the LLP.
- Preparing, signing and delivering the Annual Return form.
- Finally, to act on behalf of the LLP if it is wound up or dissolved.

Designated members are accountable in law for failing to carry out these legal responsibilities. It is possible to designate all members automatically or to specify individuals to take on these roles.

### **Who are LLPs available to?**

Under the original proposals LLPs were only going to be available to regulated professionals such as lawyers and accountants. However, after much criticism the Government has opened up LLPs to any two or more persons carrying on any trade or profession, i.e. just about anyone can set up an LLP.

As all LLPs have to be formed with a view to profit, however, they cannot be used by charitable, non commercial or non profit making organisations.

### **Who are they likely to appeal to?**

Despite their availability to all, most new LLPs are likely to be formed by professional firms (lawyers, architects, accountants etc) who are more familiar and comfortable with the ethos of a partnership. LLPs may also become the vehicle for choice for newly established professional firms.

Others concerned about limiting their liability to third parties, however, will probably favour the formation of a new limited liability company.

### **What formalities are required?**

The formalities to establish an LLP, as well as annual requirements thereafter, are similar to the existing rules for companies but with appropriate modifications.

Identical and similar names to existing companies or LLPs cannot be used. The name of the LLP must end with the words Limited Liability Partnership. For an LLP to incorporate it must submit an incorporation document signed by two or more persons to the Registrar of Companies. A statutory fee of £95 is payable.

### **Is a partnership agreement necessary?**

LLP members will not be obliged to enter into any formal agreement among themselves and if they do it need not be made public. Default provisions will apply if LLP members do not make their own agreement and they will include such provisions as equal profit sharing amongst the members. In most cases these will not be deemed suitable and therefore a properly drafted and fully considered members agreement is an imperative. It may be based upon the existing partnership agreement but consider fully the impact of company and insolvency laws which now apply.

### **What are the taxation rules?**

It is the intention that an LLP will be treated for nearly all tax purposes as a partnership. This includes not only direct taxes, but also VAT and National Insurance. Each member will be taxed directly on their share of profits and they will be solely liable for that tax. There will also be a Tax Return for the LLP as a whole.

There is nothing to stop a limited company being a member of an LLP with its share of profits being subject to Corporation Tax.

Unlike ~~unlimited partnerships~~, however, there are special rules which place a limit on the amount of loss relief a member of a ~~trading~~ rather than ~~professional~~ partnership can have.

Tax relief for interest and trading losses that members of an LLP can claim against income other than from an LLP is limited to the amount they have subscribed to the LLP together with any further amount they have undertaken to contribute on the event that the LLP is wound up. The balance of any loss or interest can be carried forward and offset against future shares of LLP profits.

A member of a ~~professional~~ LLP is able to enjoy unlimited interest and loss relief similar to partners in unlimited partnerships.

There are special rules to prevent members of an ~~investment~~ LLP from claiming tax relief on the interest paid on monies borrowed to invest in the investment LLP.

## **What about partnership changes and cessations?**

The usual rules relating to partnership changes and cessations will apply. For example, a change from a partnership to an LLP will be treated as a continuation of a partnership for tax purposes provided that it would have been a continuation under the existing rules.

## **Stamp duty**

For partnerships considering incorporating as LLPs, there is a specific relief from Stamp Duty. However, this is only available if all the partners in the old partnership subscribe to the LLP and their interest in the partnership property is the same in the old partnership and the LLP. Thus, even though it might be a suitable opportunity to allow for partnership changes, the exemption would be lost if this happened. There is no relief for a transfer the other way round.

## **What are the downsides?**

The two factors which may dissuade large numbers of existing partnerships opting for LLP status are ~~disclosure~~ and ~~regulation~~. LLPs will be obliged to register and file annual accounts, which will then become publicly available to staff, suppliers and competitors. Disclosure of the income of the highest paid member will also be required. This comes down to a loss of privacy.

Consideration must also be given to whether banks and suppliers are satisfied to deal with solely a corporate entity now capable of voluntary liquidation, and where members can avoid personal liability. Most lenders (especially banks) will require guarantees from individual members, in which case the limited liability protection for that member will be lost. If this is going to be the case what is the point of becoming an LLP?

Existing customers will also have to be considered. Will they be willing to transfer their business to a new supplier who has limited liability?

Talk to your usual Argent's contact to establish the relevance of these factors to your individual circumstances.

Argent's has prepared this information as a service to clients. We recommend that professional advice is sought before taking action and we cannot accept any liability for actions taken as a result of the information given.