

Dickinson Manser LLP

S o l i c i t o r s

LIMITED LIABILITY PARTNERSHIPS **AN OVERVIEW**

Limited Liability Partnerships (LLPs) have existed in England and Wales since the implementation of the Limited Liability Partnership Act 2000. LLPs are generally very similar to companies and are governed by much of the same legislation. For example they provide their owners with limited liability (limited to the amount of capital each owner has agreed to contribute), they can create floating charges over their assets and they must file annual accounts and returns at Companies House. In contrast however they retain many of the operating freedoms and tax advantages of traditional partnerships.

Starting up an LLP

Generally any two or more persons who carry on or intend to carry on a lawful business with a view to profit may form an LLP. Once formed an LLP has a separate legal identity to that of its members so it can do things such as own property or be sued in its own right. This means that, much like a company it must be officially incorporated. To do this you must file an incorporation document (Form LLP2) with Companies House. The Registrar of Companies must then approve the incorporation and once this is done the LLP is registered and a certificate of incorporation issued.

Operating an LLP

There is no prescriptive regime relating to the operation of LLPs like there is for companies (i.e. there are no requirements for certain decisions to be passed by specified majorities at general meetings or board meetings). However, there are some limited default provisions relating to the rights and duties of LLP members. These include:-

1. All members are entitled to share equally in the capital and profits of the LLP.
2. All members are entitled to take part in the management of the LLP.
3. No member is entitled to be paid for acting in the business or management of the LLP.
4. The LLP must indemnify each member for payments made and personal liabilities incurred in the ordinary and proper conduct of business or the preservation of the business or property of the LLP.
5. All members must account to the LLP for benefits derived from transactions concerning the LLP and profits obtained from competing businesses.

6. The unanimous consent of all existing members must be given to the appointment of new members.
7. No member may be expelled from the LLP.
8. A person may cease to be a member of the LLP by agreement with the other members or by giving reasonable notice to the other members.

In most cases the above provisions will not be suitable or sufficient but it is open to LLP members to override them by making an express agreement between themselves. It is very wise for the LLP members to enter into professionally drawn LLP agreements (similar to partnership agreements) governing the management of the LLP and their respective rights and obligations. Such agreements remain private between the members and provided they are properly drawn can save a lot of confusion, arguments and money should disputes or other difficulties arise during the continuance of the LLP or on its dissolution.

Regardless of the internal arrangements in place within LLPs they must comply with certain disclosure and filing requirements. The extent of the duties of LLP members in this regard depends on whether they are designated or non-designated members. All LLPs should have at least two designated members. If no members are specifically allocated as designated members or if the number specifically allocated is reduced to one, all members will be deemed to be designated. Designated members have additional responsibilities such as:-

1. Signing and delivering the accounts of the LLP to Companies House.
2. Preparing, signing and delivering the LLP's annual return to Companies House.
3. Appointing an auditor (unless the LLP is exempt from this requirement).
4. Notifying Companies House of changes in the LLP's membership, name or registered office.

If the designated members fail to fulfil the above responsibilities they can be guilty of criminal offences and liable for fines. LLPs themselves can also be liable to penalty charges issued by Companies House.

Dissolving an LLP

Active steps must be taken to wind up LLPs and have them removed from the register at Companies House. The procedures involved vary according to the circumstances i.e. whether the LLP in question is trading, solvent or insolvent. The procedures relating to insolvent LLPs are much the same as those relating to insolvent companies and members like company directors can be made to contribute to an LLP's assets if they are found guilty of wrongful or fraudulent trading. The limited liability of LLP members is further eroded by provisions whereby any monies withdrawn by a member in the two years before a winding up can be clawed back should it be established that such was taken at a time when there was no reasonable prospect of avoiding insolvent liquidation following the withdrawal. It should be noted that banks and other creditors often require LLP members to give personal guarantees for the LLP's borrowings in any case, as may landlords in respect of any leasehold property let to the LLP.

Final Points to Note

LLPs are becoming increasingly popular, as they offer a flexible operating medium through which those running businesses can limit their liabilities while retaining the tax advantages enjoyed by traditional partnerships. However the legislation applicable to LLPs is complex and the consequences of falling foul of it can be significant. It is therefore essential that professional advice is sought when forming, dissolving or making significant changes to LLPs. If you need any further information or assistance on this topic please contact a member of our commercial department who will be more than happy to assist you.

This fact sheet is one in a series of publications designed to provide practical guidance on matters of interest to clients. Copies of all our fact sheets may be obtained free of charge on request from any of our Partners or Staff.

We believe the information contained herein to be correct as at October 2008. Whilst all possible care is taken in the compilation and presentation of this fact sheet, no responsibility for loss, occasioned by any person acting or refraining from acting as a result of the material in this fact sheet, can be accepted by the firm or the author.

The information in this Fact Sheet is not designed to be a definitive text on this issue. On the contrary, it is designed to merely serve as a guide to supplement what we can advise you on directly. If you have any particular queries, especially where the circumstances of a matter make it unusual, you should seek further advice.