

Limited Liability Partnerships - The Third Way

Introduction

The availability of limited liability has been the main reason for the popularity of private limited companies as business media. However, there are some disadvantages to limited liability, such as public disclosure of the company's activities and a complex regulatory regime. The medium of a partnership can be more appropriate choice in certain circumstances, particularly for professional firms. However, each partner in a partnership will be personally liable for all liabilities of the partnerships and there is no limit on such liability. This has left the partnerships exposed to potentially large negligence claims and it has been a source of considerable concern to all partnerships.

It was against this background that the concept of limited liability partnerships (LLP(s)) was introduced by the Limited Liability Partnerships Act (LLPA) 2000, which came into force on 6 April 2001.

Advantages of a LLP

- LLP members have limited liability.
- LLP members suffer no joint liability for contractual obligations or joint and several liability for torts.
- A LLP is a body with its own separate legal personality. Unlike a partnership, it can contract and hold assets in its own name. In addition, because contracts are made in the name of the LLP rather than in the names of the individual partners it does not need to procure novations of existing contracts for incoming partners.
- At an operational level, there are few of the formalities associated with company management procedures under the LLPA.
- A LLP can create floating charges like a company. A partnership may not do this.
- A LLP will be treated as a partnership for tax purposes.
- For LLP members who are individuals rather than corporate entities, partnership type class 4 National Insurance (NI) contributions will be payable, there being no NI to pay in respect of an individual member's profit shares.

Disadvantages of a LLP

- Members of a LLP will be subject to statutory obligations. The LLP Agreement may be able to limit the application of these duties to particular members, such as those who may only take the role of passive investor. However these duties may not be avoided in entirety, especially those in statutory nature owed to third parties.
- No provision is made in the LLPA in relation to the conversion of a LLP into a company.
- There are certain disclosure requirements (see below).
- There must be a minimum of two members in a LLP. When the number fall to one and remain so for at least 6 months, the benefit of limited liability will cease and the remaining member will become jointly and severally liable with the LLP for all debts and liabilities incurred during that period.

Disclosure Requirements

The key filing responsibilities of a LLP are:

- Accounts
- Annual Return

- Notification of changes to the membership
- Goodman Derrick Disclaimer & Privacy policy
- Notification of changes in designated members
- Notification of a change to the registered office

Creation Requirements

A LLP has to be registered with Companies House. The following must be delivered:

- Form LLP2
- A cheque for the registration fee of £20 made payable to the Registrar of Companies

A certificate of incorporation will be issued upon registration.

There must be a minimum of two members in a LLP. There is a special class of members known as 'designated members'. Details of the designated members will have to be contained in the incorporation document. Designated members are members whose responsibility is to make ensure that all the requirements of the LLP legislation regarding disclosure are met. There must be a minimum of two designated members.

Key differences from companies

- A LLP has members but no directors or shareholders.
- A LLP has no share capital.
- A LLP has no Memorandum or Articles of Association.
- Any members agreement (LLP agreement) is a private document which is confidential to the members.

Conversion from partnership to a LLP

When an existing partnership wishes to convert into a LLP, it would need to prepare a transfer agreement for the existing business.

Business issues to be considered include:

- Review of the partnership agreement.
- Employees of the partnership and application of the Transfer of Undertakings (Protection of Employment) Regulations.
- Tax and accounting implications.
- Third party consents (contracts with employees, suppliers, leases etc).
- Clients attitude to the conversion.

A LLP will allow entrepreneur the protection of limited liability, while preserving the flexibility and tax advantages associated with a partnership. It appears that interest in the LLP is increasing since its introduction 4 years ago and it is becoming a commonly adopted term of business.

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