



# Limited Liability Partnership

Company &  
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## Introduction

Since 6 April 2001, it has been possible to form a new business entity: the Limited Liability Partnership (*or 'LLP'*). This was introduced by the Limited Liability Partnership Act 2000 (*the Act*). The LLP is intended to combine the advantages of limited liability with the flexibility of the partnership structure. The Act has effect in England, Wales and Scotland

## What is an LLP?

The key characteristics of an LLP are:

- it is a body corporate and therefore has a separate legal personality from its members. This means an LLP can enter legal contracts with customers, receive income, own assets and employ staff. It enjoys 'unlimited capacity' which means it has the same capacity and freedom to enter into a contract or private transaction as a private individual;
- an LLP has no share capital but members are like shareholders in that liability is limited;
- all or any members can be foreign nationals or residents in the United Kingdom;
- like a company and unlike a partnership, an LLP can create floating charges as security for any borrowing;
- LLPs have to file accounts at Companies House;
- the Companies Act 1985 and insolvency legislation apply to LLPs in the same way they apply to companies;
- members are free to share profits as they chose;
- members can decide the management of an LLP and the appointment and retirement regime.

## How is an LLP Formed?

An LLP can only be formed where there are 'two or more persons associated with carrying on a lawful business with a view for profit' and have 'subscribed their names to any incorporation document'. The LLP can be used by any trade, profession or occupation.

An LLP is incorporated by registration at Companies House. Initial members will be the subscribers and submit their application to the Registrar of Companies together with the fee (£95). To ensure all the provisions of the Act have been satisfied, a subscriber or solicitor should also send to the Registrar of Companies a Compliance Statement (*in the approved form*) that the statutory requirements have been complied with (*two or more persons associated for the carrying on a lawful business with a view for profit*).

Once the application is processed, the LLP will be granted a certificate of incorporation.

Subsequently, the Registrar of Companies must be notified of any changes in membership, members names and addresses and/or the registered address. Annual accounts and an Annual Return must be filed at Companies House.

## Structure of an LLP?

Unlike a company, an LLP does not have a Memorandum or Articles of Association. For practical reasons, it is however, advisable that all members enter into an agreement between themselves before the incorporation of the LLP. Upon incorporation, the Act will create obligations, and it will be important to agree how these should be dealt with. (*See next page*)



Where there is no agreement, the Act imposes its own rules, which include equality in profit sharing, shares in capital and rights to take part in management.

The current legislation permits partnerships to convert to LLP status but does not allow for LLPs to be re-formed into companies.

## Advantages and Disadvantages of LLPs

### Advantages

Unlike partnerships,

- there is no statutory obligation upon a member to contribute to the LLP's losses
- members are not joint and severally liable for the negligence of other members
- in the event of a winding up, a member's liability is limited to the contribution agreed to in the agreement, although there is always a risk that the Liquidator can claim back monies withdrawn by the members in the two years prior to liquidation.

### Disadvantages

Disclosure to Companies House

- The records of the LLP can be accessed as a public record
- Annual accounts and auditors reports must be filed. Subject to certain thresholds, turnover, profits and members remuneration will be disclosed (*small LLPs need not disclose their profit and loss account*).

### Regulation

- Must have accounts filed at Companies House
- Must notify Companies House of changes in membership and their details.
- DTI can request further information or conduct an investigation
- Stationery formalities - name, registration number and address of registered office must appear on all business letters

## The LLP Agreement

The LLP Agreement will form the constitution, like the Articles of Association and a shareholders' agreement for a company. Although such an agreement need not be in writing, it is advisable to have one agreed and signed. The contents of the agreement will be similar to a partnership agreement. Points to cover include:

- Decision making structure - who makes decisions and how powers are delegated. In the absence of agreement, the Act states that decisions are made by majority rule
- Fiduciary obligations
- Non-fiduciary obligations (*express/implied*) eg using reasonable care and skill in performing duties on behalf of the LLP
- Capital requirements
- Profit sharing and salaries
- Provisions dealing with LLP losses
- Duties of members
- Management structure
- Cessation of membership (*and its consequences*)

## Taxation and LLPs

The Act makes the tax affairs of the LLP and members transparent. An LLP is treated as if members were partners. Points of note include :

### Income Tax

Members are treated the same way a partner would be dealt with under income tax provisions. Certain reliefs available to partners are also available to members under LLPs.

### **National Contributions**

Only Class 4 National Insurance Contributions will be payable by the members.

### **Capital Gains Tax**

Gains on LLP assets will be treated like those of a partnership.

### **VAT Treatment**

An LLP is liable for VAT registration subject to the normal rules that apply. The “transfer of a going concern” rules may also apply here to ensure that no VAT is payable on the conversion.

### **The Status of Members**

Under the Act, members are agents of the LLP. On the assumption that a member is acting in the normal course of the LLP’s business the members risk of personal liability reduces from that of a partner.

When an LLP accepts work from a client, it should outline the terms of business through a retainer letter. This should make it clear that the client is not dealing with the members but with the LLP.

### **Management of an LLP**

Every LLP must have at least two formally appointed “designated members”. They will have the same mutual rights and duties as any member, but have additional responsibilities. In law, they are also to be treated like directors of a company.

The LLP agreement should outline designated members’ responsibilities, rights and obligations to fellow members. The agreement should also prescribe how they can be appointed and removed. The Company Directors Disqualification Act 1986 also applies to designated members in the same way as it does to company directors.

### **Insolvency**

Corporate insolvency procedures apply to LLPs. Any reference to directors or officers are deemed to be references to members.

The rescue procedures for companies also apply to LLPs. Voluntary arrangements, administration and receiverships all apply to LLPs.

If a rescue of the LLP is not possible, winding up is likely to follow. On appointment of a liquidator, all powers of members cease unless the liquidator allows otherwise.

Once a winding up order has been made, no action can be brought against the LLP or its property except with the court’s permission. The liquidator is responsible for the realisation of the LLP’s assets and distribution to creditors.

The above is a summary of some points of the topic covered. It should not be regarded as legal advice in its own right. For that advice please contact us direct.

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