

Limited Liability Partnerships

Attached:

- **Register magazine from Companies House**
This magazine contains a comprehensive article about Limited Liability Partnerships which outlines the basics.
- **FAQs about LLPs**
Source: Companies House.
- **GMS Contract and Company Status**
Extract from National Association of Primary Care website.
- **'Explanatory Note for Health Boards'** demonstrates that at the launch of the new contract, only 3 types of company status were considered: single handed practitioner / partnership / company limited by shares. See notes: 41, 42 and 43.

Also, further references to company status – sources as stated.

- **Extract from:**
Statutory Instrument 2004 No. 291: The National Health Service (General Medical Services Contracts) Regulations 2004 defines with whom the PCT can hold a contract.
- **Copy of Focus on Private Practice**
This says that *'The GPC will provide more guidance on limited-company status in the future.'*
- **Further useful articles about LLP status**
Sources: as stated.
- **Conclusion**

GMS Contract and Company Status

nGMS Provider Status

Q Do the draft contract regulations allow the contractor to be anything other than a sole practitioner or a partnership? Is there anything in the regulations which precludes the contract being held by a limited company?

A GMS2 provides considerable new flexibility about how GMS providers are constituted. GMS contracts may be entered into with any of the following:

- Sole practitioner GPs
- Partnerships that include at least one GP
- Certain types of company, limited by shares, similar to the existing PMS qualifying body option.

GP practices considering setting up as a limited company should seek professional advice on taxation. The Chancellor has indicated he is looking closely at some of the more favorable tax planning opportunities available to owner-managed companies.

(Source: National Association of Primary Care /

<http://www.primarycare.co.uk/flash/Q&A/Questions%20&%20Answers.htm>)

Extract from:

Statutory Instrument 2004 No. 291

The National Health Service (General Medical Services Contracts) Regulations 2004

PART 2

CONTRACTORS

Conditions: general

3. Subject to the provisions of any order made by the Secretary of State under section 176 of the Health and Social Care (Community Health and Standards) Act 2003[a] (general medical services: transitional)[41], a Primary Care Trust may only enter into a contract if the conditions set out in regulations 4 and 5 are met.

Conditions relating solely to medical practitioners

4. - (1) In the case of a contract to be entered into with a medical practitioner, that practitioner must be a general medical practitioner.

(2) In the case of a contract to be entered into with two or more individuals practising in partnership -

(a) at least one partner (who must not be a limited partner) must be a general medical practitioner; and

(b) any other partner who is a medical practitioner must –

i) be a general medical practitioner, or

(ii) be employed by a Primary Care Trust, a Local Health Board, (in England and Wales and Scotland) an NHS Trust, an NHS foundation trust, (in Scotland) a Health Board or (in Northern Ireland) a Health and Social Services Trust.

(3) In the case of a contract to be entered into with a company limited by shares -

(a) at least one share in the company must be legally and beneficially owned by a general medical practitioner; and

(b) any other share or shares in the company that are legally and beneficially owned by a medical practitioner must be so owned by -

(i) a general medical practitioner, or

(ii) a medical practitioner who is employed by a Primary Care Trust, a Local Health Board, (in England and Wales and Scotland) an NHS Trust, an NHS foundation trust, (in Scotland) a Health Board or (in Northern Ireland) a Health and Social Services Trust.

General condition relating to all contracts

5. - (1) It is a condition in the case of a contract to be entered into -

- (a) with a medical practitioner, that the medical practitioner;
- (b) with two or more individuals practising in partnership, that any individual or the partnership; and
- (c) with a company limited by shares, that -
 - (i) the company,
 - (ii) any person legally and beneficially owning a share in the company, and
 - (iii) any director or secretary of the company,

must not fall within paragraph (2)*.

*Be a murderous felon etc.

Company Law and Investigations

Limited Liability Partnerships (LLP) Act 2000

Limited Liability Partnerships are a new form of business entity with limited liability. However, the members of an LLPs will be free to agree amongst themselves the relationship between them, rather as partners do in a partnership. The LLP itself will be a separate legal entity owned by the members which means that the LLP will be able to continue in existence independent of changes in membership.

[The Limited Liability Partnerships Act 2000](#), [The Limited Liability Partnerships Regulations 2001](#) and [The Limited Liability Partnerships \(Fees\) \(No.2\) Regulations 2001](#) are now in force. Interested firms can now register as an LLP with Companies House. [The Companies House](#) website contains guidance on registration and information on LLPs generally.

On 7 March 2001 the Inland Revenue made an announcement confirming that LLPs will in general, be treated for tax purposes as a business carried on by partners in a partnership, and confirmed the guidance set out in their December [Tax Bulletin](#). The announcement also confirmed that following consultation on the possible alternative uses of LLPs, which was announced in the Pre-Budget Report, legislation would be brought forward to ensure that use of the new structure does not lead to tax loss when used as an alternative to existing business structures. Details of the announcement can be found at www.inlandrevenue.gov.uk/bulletins

On 8 November the Chancellor of the Exchequer announced in the [Pre Budget Report](#) that the commencement date for registration as a Limited Liability Partnership will be 6 April 2001. The date coincides with the start of the personal tax year allowing a smoother transition for existing firms wishing to incorporate as LLPs.

Once the Insolvency Act 2000 has been fully implemented, it will be applied, as appropriate, to LLPs. We expect to lay these regulations in the Autumn.

(Source: DTI website: <http://www.dti.gov.uk/cld/llpbill/>)

Limited Liability Partnerships

A Limited Liability Partnership (LLP) shares many of the features of a normal partnership - but it also offers reduced personal responsibility for business debts.

Unlike members of ordinary partnerships, the LLP itself is responsible for any debts that it runs up, not the individual partners.

(Source: Companies House)

An overview of limited liability partnerships - Autumn 2001

The proposal to permit incorporation as an LLP in Great Britain emerged from a review of the law of joint and several liability. The need for this new commercial vehicle derives largely from the general increase in the incidence of professional negligence litigation and in the size of claims. This entails a great risk to partners' personal assets when a claim exceeds the sum of the assets and insurance cover of the partnership.

It is thought that LLPs will be particularly attractive to professional partnerships but the intention is that they will be available to all businesses. The interest of the property industry in this new vehicle relates not only to professional partnerships such as surveyors and architects, but also concerns developers in relation to joint venture arrangements and investment companies. It is also anticipated that LLPs will become commonly used as special purpose vehicles for commercial property transactions and that tenants will seek to hold leases in LLPs.

The detailed provisions relating to LLPs are contained in the Limited Liability Partnership Regulations 2001 (the "Regulations"), the main features of which are summarised below.

Basic Structure

The LLP will be a separate legal entity with unlimited capacity. This means that an LLP can do anything that an individual person could do. It has the ability to enter into contracts and hold property and will continue in existence in spite of any change in membership. The LLP's existence as a separate legal entity makes it more closely akin to a company than to a partnership (except insofar as the internal relations are governed by agreement between the members). The underlying approach, therefore, was to draw on the principles enshrined in the legislative treatment of companies.

The legislation allows an LLP to be formed by two or more persons for carrying on a business with a view to profit. An LLP is formed by filing an incorporation form with the Registrar of Companies. At least two people must subscribe to the incorporation document. The document must contain information on the registered office and the names of the persons who are members on incorporation. On delivery of the incorporation document, the registrar will issue a certificate of incorporation. The organisation of an LLP is therefore broadly akin to a partnership in relation to its internal matters and to a limited company in relation to its external matters.

With regard to the management of the internal matters of the LLP, there is no standard equivalent of a company's articles of association, although the members are free (but not obliged) to agree the terms of the partnership in a formal agreement. There is no obligation to publish any agreement which is entered into. As in the case of partnerships, however, there will, in general, be clear advantages in having a formal written agreement between members to regulate the affairs of the undertaking and to avoid disputes between them. The formal procedures needed to establish an LLP are likely to encourage the members to set up a formal arrangement before the LLP commences business. If members of an LLP decide not to enter into a formal agreement, the Regulations provide for certain default provisions to govern the relationship between members, or if an agreement does exist, where the agreement does not include provision to deal with a particular issue. The default provisions are based on ss324-26 of the Partnership Act 1890 and operate similarly to Table A in respect of companies.

In relation to external matters, the most important feature of the LLPs is the limited liability of the partners. Their liability is limited in a similar fashion to shareholders of a company. A LLP will contract directly with third parties as a separate legal entity from its partners (thus reducing the risk of personal liability), whereas, in general, a partner contracts as principal and on behalf of the other partners. Therefore, the LLP and not its members will be liable to third parties.

Potential Drawbacks

The perceived drawback is that accountancy disclosure requirements will be imposed upon LLPs in the same way as they are on companies and, amongst other requirements, LLPs will need to:

- keep the accounting records specified in s221 of the Companies Act 1985;
- prepare accounts showing a "true and fair" position, in the same format as company accounts, for each financial year (and group accounts if appropriate), complying with UK GAAP;

- include in the accounts certain details regarding the members including, the average number of members for the year, totals of members' opening and closing balances, for the profits distributed or retained by them and for payments of any sort made to or by them and the amount paid to the highest earning member (though some LLPs with total profit under £200,000 will not need to disclose this);
- have their accounts audited; and
- file a copy of the accounts and auditors' report with the Registrar of Companies so they will be publicly available.

Taxation

The taxation regime introduced by the Act is similar to the existing regime for partnerships. The partners will be treated as partners in respect of their individual tax liabilities in relation to income and capital gains tax based on their share of the profits of the LLP. LLP property will be treated as partnership property. An acquisition or disposal will not be treated as being made by the LLP itself. The Act provides relief from stamp duty on an instrument transferring property from a partnership to a newly incorporated LLP.

However, the Finance Act 2001 amends some of the legislation contained in the Act to give more explicit rules to ensure that the legislation fully meets its purpose in all respects and prevents tax loss through investment and property investment LLPs ("investment LLP" and "property investment LLP" are defined in a similar manner to the current definition of investment company). The provisions of the Finance Act concerning certain members of property investment LLPs are designed to avoid the distortions to investment that would follow if LLPs were developed to provide a corporate tax-transparent property investment vehicle with tradable interests. For example, there is a restriction on interest relief for members of investment LLPs in the same way that interest relief is currently restricted for limited partners in a limited partnership registered under the Limited Partnership Act 1907. Exemptions for income and gains will not apply for pension funds, the pension business of life assurance companies and the tax exempt business of friendly societies where the income and gains are received in their capacity as a member of a property investment LLP. Also there is no interest relief for investments in investment LLPs so that individuals will not be able to claim tax relief for the interest paid on monies borrowed to invest in an investment LLP.

Conclusion

Accordingly, existing and future partnerships deciding whether to incorporate as LLPs must balance the advantages of limited liability against the potential inconvenience (and perhaps embarrassment!) of the disclosure and accounting regimes. From a tax standpoint, the position is expected to be broadly neutral save as mentioned above in relation to investment and property investment LLPs.

Regulatory Information
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(Source: Taylor Wessing)

LIMITED LIABILITY PARTNERSHIPS (LLP) BILL

DUTIES IMPOSED ON MEMBERS AND A DEFAULT PROVISION

Record of meeting held at the Department of Trade and Industry

on

3 November 1999

Background:

Concern had been expressed that, although Clause 6(1)(c) of the draft Bill published in September 1998 (URN 98/874) had applied "*the rules and principles which would apply if the law relating to partnerships applied to [LLPs]*", no such provision was made in Clause 5 (as it now is) of the revised draft of the Bill published in July 1999 (URN 99/1025). The effect would have been to apply partnership law save to the extent that a particular issue was covered by some other provision.

2 The main reason for concern at the exclusion was that it was considered that it would leave entirely uncertain the relationship between members of an LLP. There was a strong desire that partnership law should govern the rights and duties of the members of the LLP. A small working group (comprising the attendees above) was convened to look at this issue in detail, with the intention of defining more closely the particular problems which might arise, and identifying potential solutions.

Fiduciary duties imposed on members:

3 The limited liability partnership would be a body corporate, and members would be agents of it. It was likely, as a result, that a court would find that a fiduciary duty existed between members and the LLP, even though a duty of good faith between members and the LLP had not been expressly imposed in the Bill.

4 The DTI feared that in applying the original wording of clause 6(1)(c), were a court to find that a fiduciary duty existed between a member and the LLP, it would mean that individual members faced parallel fiduciary duties: duties owed to the LLP, and duties owed to fellow members. There would be no mechanism in the Bill to provide which duty prevailed, even where there was a conflict. This might cause particular difficulties, for example, on the duty contained in the Partnership Act to account for private profits - to whom should the account be made: to the LLP or the other members? There would be the potential for double jeopardy, and the need to prioritise between the rights of the members, and the rights of the LLP.

5 While it would be open to members to draft appropriate provisions in their agreement even if the legislation remained silent on the matter of duties owed between members, the meeting concluded that, although larger firms were likely to make such provisions, it would not deal with the situation were there an inadequate agreement or no agreement at all. As a result, the following options were considered:

i) Application of partnership law - ie a return to the wording in clause 6(1)(c)

6 The clear advantage was seen to be that partnership law was well understood by partnerships and practitioners, with the principles established over many years. But large areas of partnership law were inappropriate to the LLP, which is a body corporate. The application of partnership law in general would result in uncertainty as to how it interacted with the provisions of the LLP Bill itself and to the Companies Act 1985 applied to LLPs by regulations made under the LLP Bill.

(ii) Imposition of a duty of good faith between members of an LLP

7 It might be simpler, therefore, to simply impose a broad duty of good faith between members. This would enshrine the partnership ethos in statute. However, it was difficult to see how one might define such a duty, and restrict its scope such that it avoided the potential for dual duties.

(iii) Tailor specific default provisions to situation of LLP

8 The final, and generally **preferred option**, was to consider the possibility of a set of default provisions which would only apply where there was no agreement or an inadequate agreement. While not being seen by some as such an elegant and straightforward solution as (i), it avoided the possibility of dual duties. It also had the advantage that it could be achieved by regulation, retaining the flexibility for amendment as LLPs evolved.

9 The agreed intention was to produce a short provision modelled on section 24 of the Partnership Act 1890 (there was strong opposition to the alternative, a default along the lines of Table A for companies). Areas identified for inclusion were:

- Right to share equally in capital and profits
- Right to be indemnified by the LLP for activities in the course of business
- Right to take part in management of the firm
- No entitlement for remuneration for acting in the business of the LLP
- Right to have access to books and records
- Expulsion and retirement of members
- Decision by majority vote

10 There was some discussion over whether there should be provision of a general duty of good faith between members or, alternatively, provision mirroring sections 29 and 30 Partnership Act 1890. Further thought was to be given to this.

11 It was considered necessary to amend s 459 Companies Act 1985 "Protection against unfair prejudice" so that it applied in default.

Members as employees:

12 Concerns were expressed that the position of members as agents of the LLP might mean that a court would draw the conclusion that a member was in fact an employee, and entitled to protection under employment law. DTI suggested that members would have the freedom to structure their relationship so as to put their position beyond doubt in so far as it was possible, but this was considered unsatisfactory. It would place too great a restriction on the firm - there could be a wide range of differing treatment of members, not least because it was expected that most firms would want to create an LLP variation on the salaried partner.

13 The difficulty arose because there was no single test for determining whether a person was an employee. There were many factors which would be taken into account, and the way in which the contract was described and operated by the parties themselves was not decisive. Sharing profits was prima facie evidence that a person was a partner; if losses as well as profits were shared, the presumption was even stronger. However, where a person received both a salary and a share in the profits, there was strong evidence that he was an employee.

14 The **suggested solution** was an explicit statutory statement that members were not employees by reason of being members of the LLP. It was recognised that it was impossible to put the matter entirely beyond doubt (there remained a legitimate argument that there should be flexibility for the courts to decide in grey areas, so that individuals who would otherwise be regarded as employees were not deprived of their legal rights), but it might offer improved certainty on the typical relationship between member and LLP. DTI would consider.

Restrictive covenants:

15 This was a complex area. Put simply, the concern was that the courts might find unreasonable covenants existing between members and the LLP to prevent the member setting up in competition with the firm. Historically, in considering what was reasonable, the courts had been more inclined to hold a restrictive covenant on a partner as reasonable, whereas they had been less inclined to uphold such covenants imposed on a director or an employee. The worry was that the courts could view an LLP as being more closely allied to a company than a partnership.

16 Discussion failed to produce a practical solution to deal with the difficulty outright. It was concluded, though, that the statement that members were not employees would go some way towards improving the situation.

Other issues:

17 Doubt was expressed about the effect of clause 6(2) on the authority of the member as agent of the LLP. DTI agreed to consider wording to make it explicit that a member of an LLP should be categorised as an agent of the firm, irrespective of his authority to bind the LLP in any particular case.

Background

The responses to the consultation document indicated that there were still a number of outstanding concerns regarding the tax provisions contained in the Bill. The areas covered by the meeting were:

2. Income and Corporation Taxes Act 1988 - There was concern that there would be no interest relief for partners borrowings. Partners in unlimited partnerships often have personal borrowings which have been used to buy into the partnership or to finance the partnership capital. Partners currently obtain relief under section 362 of ICTA 1988. However, no relief is due if the borrower is a "limited partner" - a term which is not defined in the Taxes Act 1988. There was concern that the wording of s362(2)(a) would not apply to members of an LLP and as a result a member would not be entitled to tax relief.

Conclusion

The Inland Revenue were sympathetic to the concerns of consultees. They agreed that as interest relief is available to members of unlimited partnerships so it should be to the members of LLPs. They would consider how to achieve this and would look at whether provisions were needed to ensure that this relief was only available to individuals who were active partners.

3. Double Taxation - A number of firms that would become LLPs, especially professional firms, would have branch offices outside the UK, and as such would incur local taxation. There was a strong possibility that that LLPs outside the UK would be treated for tax purposes as a body corporate. This would result in there being a mismatch in that foreign taxes would not have been borne by the members as such.

Conclusion

The Inland Revenue explained that partners would receive tax relief for those foreign taxes in their own income tax liabilities on their share of the LLPs profit.

5. Dividends - The question was raised as to what would happen if an LLP were to own a limited company which paid dividends, how would the recipient of the dividends be taxed.

Conclusion

The dividends would flow directly from the company to the individual member of the LLP who benefited from the tax credit.

6. **Taxation and Chargeable Gains Act 1992** - There was concern that s59A did not achieve neutrality when an unlimited partnership turned in to an LLP because the instant that this happened, the assets of the unlimited partnership would not be held by the LLP, nor were the transactions necessary to achieve LLP status "dealings by the LLP" as such. As a result it was suggested that the regulations should state that Statement of Practice D12 would be applied to LLPs.

Conclusion

The Inland Revenue said that in the Government's response to the Trade and Industry Report had already stated that D12 would be applied to LLPs and as a result no further amendment was required. They would revise the guidance to ensure that this was made clear.

7. **CGTA relief for partial incorporation** - there needed to be specific mention that there would be relief if there was only partial incorporation to LLP status.

Conclusion

The Inland Revenue confirmed that if the share of the partners in the firm did not alter then there would be no tax penalty for partial conversion. However, if the ratios changed then there would be a tax penalty. The rules on sharing ratios was covered by D12.

8. **Exchange of annuity** - Inland Revenue were asked to confirm in a Statement of Practice that an annuitant who exchanged an annuity due from a partner for an annuity payable by an LLP which succeeded to the business of the partner would not be treated as having made a disposal for CGT purposes if the annuity due from the LLP, would be treated, so far as the annuitant was concerned, as the same assets for tax purposes as the annuity due from a partnership.

Conclusion

Inland Revenue agreed that this was something that they would need to look at and would report back.

9. **Inland Revenue Statement of Practice on CGT** - There was a request that the following issues could be covered in an Inland Revenue Statement of Practice:

- That the annuitant who exchanges an annuity due from a partner for an annuity payable by an LLP which succeeds to the business of a partner will not be treated as having made a disposal for CGT purposes if the annuity due from the LLP will be treated, so far as the annuitant is concerned, as the same assets for tax purposes as the annuity due from the partnership.

Conclusion

Inland Revenue to consider this and would report back.

- There should be no cessation of trade on the transfer of trade to an LLP.

Conclusion

The Inland Revenue would consider whether any guidance was required a Tax Bulletin to clarify that an LLP continues to be treated as transparent for tax purposes if it ceases to carry on any trade or business.

- That there should be no CGT on the transfer and the interest of the members to be treated for retirement and tax purposes as the same assets the members existing in the partnership.

Conclusion

Inland Revenue stated that as long as there was no change in ownership there should be no CGT on transfer and members interests.

10. **Inheritance Tax Act 1984** - The following points were raised on IHT:

- It should be made clear that s107 can incorporate pre-LLP periods of ownership by a partner.

Conclusions

Inland Revenue confirmed that periods of pre-LLP ownership would count as part of the two year period.

- Whether the effect of s267A(d) IHT was to ensure the close company provisions in s94 onwards will not apply to LLPs.

Conclusion

Consultees to write to Inland Revenue with their concerns.

- Is it the effect of s267A(d) to make available to members of the LLP the normal relief and exemptions that are available to partners in a general partnership including s10 IHT.

Conclusion

These reliefs and exemptions would apply to LLPs.

11. **Stamp Duty** - There was strong concern, that the provisions as currently, drafted would not provide for tax neutrality when transferring from a general partnership to an LLP.

Conclusion

Inland Revenue asked that consultees write to them outline their concerns and possible methods of how the problem could be resolved. Inland Revenue in the meantime would discuss the issue with their colleagues who dealt with Stamp Duty.

12. **National Insurance** - The question was asked why there was no mention in the Bill of how National Insurance Contributions would be dealt with.

Conclusion

It was confirmed that the intention was that members of an LLP would be treated in the same way as partners were under the current legislation. Therefore, they will remain liable for class 2 National Insurance contributions. Existing powers in relation to directors and officers of companies in section 121C and D of the Social Security Administration Act 1992 would also be applied. Although, this had already been set out in the Government's response to the Trade and Industry Committee the Inland Revenue agreed, for the sake of certainty, to include it in a Tax Bulletin.

13. **Value Added Tax** - There was concern that the VAT rules had specific provisions to deal with partnerships but the Bill made no reference to how an LLP would be dealt with for VAT purposes.

Conclusion

HM Customs & Excise explained that LLPs would be registered as bodies corporate for VAT purposes. LLPs would also be able to join a VAT subject to s736A of the Companies Act 1985. They would also gain confirmation that as LLPs would be registered as bodies corporate for VAT purposes, that transactions between the LLP and its members would be outside the scope of VAT.

Conclusion

1. At the time of the New Contract negotiations, LLPs were simply not considered.
2. There appears to be no reason why LLP status should not be a viable consideration for Contractors i.e. they are a hybrid of a partnership agreement and a company limited by shares. This should not compromise the position of a PCT.
3. There are advantages to members of an LLP (limits the liability of their personal assets).
4. The GPC is already committed to issuing a guide to limited company status. We should recommend that this be extended to include LLPs and the design of a simple endorsement that can be applied to contracts should a Practice choose to adopt LLP status.