

LIMITED LIABILITY PARTNERSHIPS ACT 2000

EXPLANATORY NOTES

OVERVIEW OF THE LIMITED LIABILITY PARTNERSHIP:

A separate legal entity:

13. The limited liability partnership will be a separate legal entity with unlimited capacity. This means that an LLP can do anything that a natural 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 – see paragraph 17 below). The underlying approach, therefore, was to draw on the principles enshrined in the legislative treatment of companies.
14. The LLP's existence as a corporate entity means that the effect of the general law is different in comparison with a partnership. For example, it is anticipated that a third party will usually contract with the LLP itself rather than with an individual member of the LLP whereas, in general, a partner contracts as principal and on behalf of the other partners.
15. Should a partner be negligent in the work that he carries out for a client, there will generally be two possible causes of action against that partner: contract and tort. However, because the limited liability partnership will be a separate legal entity with which the client has contracted, only one action (the tort action) is potentially available against the member.
16. Should the courts consider the case of a negligent member of an LLP whose conduct has resulted in economic loss for his client, the courts' decision cannot be forecast with certainty. But, recent case law¹ suggests that in deciding whether such a member was potentially liable to a client, the courts would have regard to various factors including whether the member of the LLP assumed personal responsibility for the advice, whether the client relied on the assumption of responsibility and whether such reliance was reasonable.

Internal relations:

17. As regards the management of the internal affairs of the LLP there is a parallel with the system that operates for partnerships. Members will not be obliged to enter into a formal agreement among themselves and there will be 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, including the need for an application to the registrar of companies, are likely to encourage the members to set up a formal arrangement before the LLP commences business. As noted in paragraph 12, however, we have published regulatory default provisions governing the relationship between the members which

¹ Williams & anor v (1) Natural Life Health Foods Ltd (2) Richard Mistlin (1998) 1 WLR 830

These notes refer to the Limited Liability Partnerships Act 2000 (c.12) which received Royal Assent on 20 July 2000

would apply where no agreement existed, or the agreement did not include provision to deal with a particular issue.

Taxation:

18. The profits of the business of an LLP will be taxed as if the business were carried on by partners in partnership, rather than by a body corporate. This ensures that the commercial choice between using an LLP or a partnership is a tax neutral one.
19. The taxation clauses in the Act are expressed in broad terms so that the existing rules for partnerships and partners will, in general, simply apply to LLPs, and members of LLPs, which are carrying on businesses, as if these were partnerships and partners respectively.
20. The transfer of an existing business to an LLP will only be treated for tax purposes as giving rise to a cessation of the business of the partnership which is making the transfer if in otherwise identical circumstances a transfer between one partnership and another would do so.
21. The transfer of assets between a partnership and an LLP will only give rise to chargeable gain or capital allowance consequences if, in otherwise identical circumstances, a transfer of assets between one partnership and another would do so.
22. Similarly, Inland Revenue Statements of Practice and Extra Statutory Concessions will apply to LLPs and members of LLPs as they apply to partnerships and to partners.