

## **INCORPORATION OF A LIMITED LIABILITY PARTNERSHIP**

Hegarty LLP was formed in 1974 and is now a major regional player in the law marketplace, serving clients both locally and across the UK. Our rapid growth is a result of offering a top quality service, backed by an innovative approach to the law. We have been first with many services and marketing initiatives, and continually drive to exceed client expectations.

If you want help regarding forming a limited liability partnership (LLP) and the legal implications of this please contact Andrew Heeler on 01733 295661 or email [andrew.heeler@hegarty.co.uk](mailto:andrew.heeler@hegarty.co.uk).

The following information explains more about the formalities of formation to help guide you through the process.

### **Why choose an LLP?**

The LLP is a relatively new vehicle for those wishing to run a business, created by the Limited Liability Partnerships Act 2000. It was originally introduced as a result of concerns from the accountancy profession, and the original bill intended to limit the availability of the LLP to specified professions. However, as a result of extensive consultation before the bill became law, the LLP has been made available to all. There is provision to change your partnership to an LLP, although there is no provision for transferring a company to an LLP.

The LLP allows its members the flexibility of organising their internal structure as a traditional partnership, while giving the security of limited liability similar to a company. It doesn't have directors or shareholders, and therefore no share capital either. There are no provisions relating to meetings or resolutions. On the other hand the disclosure requirements are similar to those of a limited company and a register is kept at Companies House.

Non-Profit making organisations (such as a charity) cannot register as an LLP.

## **What you need to know:**

### **1 Members:**

A company is run by its directors and owned by its shareholders, and the Companies Act strictly controls the dealings between them. For example, the directors run the business day to day but may have to get shareholder's consent for example to issue more shares, or take out a loan.

An LLP must also have two types of people involved: designated members and members. However, while there are certain rules governing their relationship, for the most part it is up to the individuals concerned to control their relationship with their partnership agreement.

#### **1.1 Designated Members**

These are the people who do the tasks which in a company would fall to the directors and the secretary, i.e., run the LLP on a day-to-day basis. In particular, they are responsible for:

- 1.1.1 appointing an auditor;
- 1.1.2 signing accounts;
- 1.1.3 delivering accounts;
- 1.1.4 notifying the registrar of any membership changes;
- 1.1.5 preparing and delivering the annual return; and
- 1.1.6 acting on behalf of the LLP if it is wound up.

The designated members are accountable in law if they fail to carry out any of these duties.

There is no limit on the number of designated members that the LLP can have, but if there are two or more members then the LLP must have at least two designated members. If the LLP has only one member then that member is a designated member.

#### **1.2 Members**

Members of the LLP are part of the LLP and entitled to share in the profit. They are entitled to bind the LLP and are covered by the limited liability. However, they do not have the responsibilities of the designated members.

### **2 Liability**

By choosing a limited liability partnership, you have the flexibility of a partnership, while having limited liability like a company. However, the liability of a company is limited to its share capital, and as a limited liability partnership does not have shareholders, the limited liability works in a different way. The members themselves state how much they will be

liable for in the event of the partnership being wound up, and that is the limit of their liability.

It is possible to lose the protection of limited liability, for example by continuing to trade when you know that there is a good chance that the company will not be able to afford to pay its debts. Also, it is common for banks to ask for personal guarantees from individuals in the business to cover a particular loan, or indeed all of the indebtedness of the business.

### **3 Choice of name**

The LLP name must be registered at Companies House. In principle, you may choose to register under any name you wish as long as it has not been registered by another business and ends 'Limited Liability Partnership' or 'LLP'. The choice is also subject to the Business Names Act 1985. The name must also be displayed outside the company's registered office. Hegarty LLP can help you to choose the best name to comply with the statutes and suit your needs.

An LLP may change its name at any time. The procedure for this will depend on the LLP Agreement. If the LLP is silent, then the consent of all the members will be required. Once the name has been changed the LLP must notify the Registrar.

### **4 LLP Agreement**

There is very little statutory control over the running of an LLP. Like a traditional partnership, the members are free to decide between themselves how their business is run. Also, unlike the articles of a company, the LLP agreement is a private document.

An LLP agreement can contain as much or as little control as the members wish. It can cover for example how decisions will be made, how profits will be shared, and what will happen in the event of a member wishing to leave the LLP (or indeed the majority of the members wishing to expel a member).

The most important provision to contain is the extent of the members' liability in the event of the LLP being wound up. This is because while shareholders have paid for their shares, the members of the LLP do not need to pay in advance and therefore there is no equivalent of the share capital that is used to pay creditors in the event of a company being wound up.

It is also possible to have no agreement at all. In this case, the Limited Liability Partnership Regulations 2001 sets out default rules to cover the running of the business. These include for example that profits will be shared equally, that there is no right to be paid for working for the business, and that all members can take part in the management.

## **5 Registered Office**

The registered office is the address to which all formal correspondence, such as notice of court proceedings, will be sent. Whilst it need not be the trading address, it should be an address where you can receive correspondence. The address of the registered office must be sent to the Registrar.

An LLP is required to keep many documents such as accounting records and copies of charges. All these documents must be kept at the Registered Office.

## **6 Accountants and Auditors**

The LLP must prepare annual accounts and deliver these to the Registrar. Also remember that once a business reaches a set turnover (currently £60,000.00) it must register for VAT and will thereafter have to file a VAT return with Customs & Excise. This is the responsibility of the designated members and something you should discuss with your accountants.

It is compulsory for large businesses to have their accounts audited by qualified auditors. For small businesses there is no requirement, but many people prefer to have their accounts audited.

## **7 Bankers**

Your business must also appoint bankers. All the high street banks have business advisors and it is a matter of choosing the right bank for you.

## **8 Insurance**

It is essential to think about what insurance you will need for your new business. Any property and other assets obviously need to be insured, but you may also need Public Liability Insurance, Professional Indemnity Insurance, and if you will have employees, Employers Liability insurance.

## **9 Records**

The business must keep detailed records of, amongst other things, all its designated members, members, and any charges or mortgages over its property. These details must be kept at the registered office and made available to anybody who wishes to see them. The business will also be required to keep certain documents, for example the certificate of incorporation. It is helpful to keep all this information together and it is the responsibility of the designated members to ensure that these are kept up to date.

## **10 Stationery**

All businesses must make sure all their business stationery contains certain information such as the LLP name and registered office. Extra

information must also be included in certain situations. Hegarty LLP can tell you exactly what information you need to provide for your situation.

The contents of this information sheet is for information only. You should never act on the contents of the information sheet alone, and should always seek professional legal advice regarding to your particular situation before taking any action. For more information about this, or any other aspect of company law, please ring Andrew Heeler on 01733 295661 or email: [andrew.heeler@hegarty.co.uk](mailto:andrew.heeler@hegarty.co.uk). (Last updated May 2006).