

1. Introduction

This guidance note is designed to explain how the law as it applies to a limited liability partnership (LLP) and how to set up an LLP as a partnership.

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2. Choosing the right business structure

One of the earliest decisions a business needs to make is to decide on its corporate structure in order to protect its assets. This note focuses on setting up as a limited liability partnership (LLP), however for completeness other options for corporate structure are as follows:

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- 2.1 Registering as a sole trader
- 2.2 Forming a Partnership
- 2.3 Incorporating as a limited liability company
- 2.4 Incorporating as an LLP

3. Limited Liability Partnerships

LLPs were introduced as a new business structure in 2001 by the Limited Liability Partnerships Act 2000, and are especially suited to professional services companies. In its name, a LLP is not a type of partnership and partnership law does not apply to LLPs. They are a type of hybrid corporate vehicle between a limited liability company and a traditional partnership. This is because they have the limited liability available to a company's shareholders combined with the flexibility available to partnerships.

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The number of partners is not limited by law, but there must be at least two "designated" members responsible for financial matters and fulfilling a role similar in nature to that of a company's directors.

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The specific features of a LLP are:

- 3.1 it must be incorporated with the Registrar of Companies, however unlike a company it does not have shareholders, shares or directors, but has members
- 3.2 it has no articles of association, but the members' agreement is a private document (although the LLP agreement is not required to be publicly filed). Members of a LLP are not required to enter into a "partnership agreement" in place between them, however if they do not, the default provisions of the Partnership Act 1890 will apply. These include all the members having equal rights in the management of the LLP, no power to expel a member from the LLP, and the right to demand an account of the LLP's affairs, etc. Most LLPs will therefore want to override those provisions by putting in place a private agreement
- 3.3 it is a separate legal entity, which means that it can sue and be sued, and its members are protected from liability by the LLP's limited liability. This means that it protects its members from personal liability to however much they have contributed to the LLP's capital

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LLPs will often however enter into a partnership agreement, this is a private document (although the LLP agreement is not required to be publicly filed). Members of a LLP are not required to enter into a "partnership agreement" in place between them, however if they do not, the default provisions of the Partnership Act 1890 will apply. These include all the members having equal rights in the management of the LLP, no power to expel a member from the LLP, and the right to demand an account of the LLP's affairs, etc. Most LLPs will therefore want to override those provisions by putting in place a private agreement

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invested in the business
raising finance;

3.4 it has to prepare accounts which must comply with specific accounting standards;

3.5 it is tax transparent and its members are treated as self-employed for tax purposes in accordance with the Income Tax Act 2003;

3.6 following a Supreme Court decision in 2014, its members are considered “workers” for the purposes of the Employment Rights Act 1996. This means that individual members are entitled to the rights and protections conferred on “workers” under the Act, including amongst other things, the right to paid annual leave, protection from unfair dismissal and part-time status and rights under the pension auto-enrolment regulations.

LLPs are increasingly being used for businesses which involve a number of people and have enthusiastically embraced by accountants.

LLPs are also increasingly being used as limited companies. This is particularly in relation to filings, the PSC regime and the Companies House (CH) regime. These are all discussed below.

4. LLPs and the Confirmation Statement

From 30th June 2016, LLPs must deliver a confirmation statement rather than an annual return to CH. This is consistent with the requirements for limited companies.

The confirmation statement is a statement that the LLP is under a duty to tell CH for the relevant company. It must be delivered or is being delivered to CH at the time the statement is made. The statement must be made at least once a year, but the LLP may choose to make it more frequently.

A confirmation statement must be made by the end of the review period. Failure to do this may result in the LLP being struck off the register. Note that this is different from the annual return.

For new LLPs the review period begins on the date of incorporation. For existing LLPs the review period is the period between the last review period and the current review period.

As with a limited company, the process for a LLP is a “check and confirm” process rather than a “file and return” process. The LLP to repeat previously filed information as at a specific date.

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The LLP confirmation statement must be made even if there are no changes during the review period. All relevant events which have occurred during the confirmation period must be notified to CH. These relevant events include:

- the LLP's registered address;
- the LLP's members and managers;
- the LLP's PSCs and changes to PSCs).

Note that the confirmation statement must be made even if there are no changes during the review period. The LLP must complete the relevant forms separately but file them together with the confirmation statement.

More information is available on the CH website.

5. LLPs and the PSC Regime

LLPs are subject to the same requirements as companies in regards to the collecting and keeping of information in a register known as the PSC register. In addition to keeping other information, the LLP must also keep a register of members. Annex 4 of the Government's guidance relating to the PSC regime as it applies to LLPs. The requirements are:

A PSC is an individual who has significant control over the LLP in relation to a LLP:

- directly or indirectly holds more than 25% of the surplus assets on a winding up;
- directly or indirectly holds more than 25% of the voting rights;
- directly or indirectly holds more than 25% of the rights to appoint or remove the majority of those involved in management;
- otherwise has the right to exercise, significant influence or control; and/or
- holds the rights to exercise, significant influence or control over the activities of the LLP which is not a legal entity, but which would itself satisfy any of the above conditions if it were an individual.

As with companies, there is a requirement to the meaning of **significant influence or control** in relation to a LLP. This is an important document that should be reviewed in ascertaining whether the conditions are met is the LLP agreement that a LLP is likely to have.

Also as with companies, the PSC register must never be empty. The Government's guidance relating to the PSC regime as it applies to LLPs must use on its PSC register the official wording that a LLP must use on its PSC register.

Changes to the PSC regime

Prior to 26th June 2017, LLPs were required to notify CH annually via the LL CS01 confirmation statement of any changes to the PSC register.

CS01. A confirmation statement must be made even if there are no changes during the review process but all relevant events which have occurred during the confirmation period **must** be notified to CH. These relevant events include:

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- exercises, significant influence or control over the activities of the LLP which is not a legal entity, but which would itself satisfy any of the above conditions if it were an individual.

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the possibility that an entity's information could have been at significant risk.

Consequently changes were made to the entity:

- who knows or has reason to believe there has been a change to their PSC information, becoming aware or suspecting a change, to confirm that change to the central public register as soon as reasonably practicable, but not later than 14 days after becoming aware or suspecting a change, and to record in their PSC register any change to their own PSC register.
- must **within 14 days** of becoming aware or suspecting a change to their own PSC register.
- must **within a further 14 days** of becoming aware or suspecting a change to the central public register.

Forms LL PSC01 to LL PSC04 are expected that these changes to data and ensure it is always up to date in the register and the central public register.

Our guidance note on PSCs

6. Election to Keep Registers

From 30 June 2016, a LLP can elect to keep its information usually kept in a company's statutory registers to be kept on the company's registers. This is an alternative to the obligation to keep those registers on the company's registered office or a single alternative inspection address.

The registers are:

- LLP Register of members
- LLP Register of members' addresses
- LLP Register of people with significant control

If a LLP chooses to keep the registers on its own statutory registers, the registers are part of the public register. The public register is open for any person to inspect.

The election can be for 1, 2 or 3 years, when the LLP is formed and can be renewed or reverse any election. There are advantages to being kept centrally but one disadvantage is that full dates of birth will be made publicly available, which would not be available previously.

There is guidance and the company's website.

the information notified to CH for the best part of a year.

From **26th June 2017**, a relevant

entity must, if there has been a change to its PSC **within 14 days** of becoming aware or suspecting a change has occurred, asking the PSC to send a notice "as soon as practicable" that the details of any person

being confirmed by a PSC, update

of the change to ensure that the information in an entity's own PSC

notify CH of these changes. It is the responsibility and completeness of PSC information in an individual entity's own PSC

has been able to choose to send its statutory registers to the registrar of companies. This choice is an alternative to the obligation to keep those registers on the company's registered office or a single

addresses; and

public register at CH, rather than in its own statutory registers. The public register is open for any person to inspect copies of information.

The election can be made on incorporation or when the LLP is formed and a notice of withdrawal is needed to reverse any election. There are advantages to these registers but one disadvantage is that full dates of birth will be made publicly available for LLP members and PSCs who register themselves.

administer this process on CH

7. LLP Accounts

All LLPs must keep adequate accounting records for each financial year. A LLP's financial year starts on the day of incorporation for a new LLP, or the first day after the previous financial year ends for an existing LLP. The accounting reference date is chosen by the LLP and must be the anniversary of the last day of the financial year.

LLPs prepare and file accounts with CH in 2006 as modified to apply the reporting requirements of Limited Liability Partnerships, Partnerships and Groups (Accounts and Audit) Regulations 2008. The changes this has introduced include the micro entity regime, as modified for medium and large LLPs. These sized entities on CH will be able to claim exemptions for all of the following:

Micro entities:

The micro entities regime is a new legislative requirements for very small LLPs that qualify for the regime. They may choose to prepare and file accounts with CH.

To qualify as a micro entity, the following conditions must be met:

- annual turnover must not exceed £10,000;
- balance sheet total must not exceed £5,000;
- average number of employees must not exceed 10.

In calculating these three figures, the turnover must be proportionately adjusted where the financial year is not a full financial year. The balance sheet total is the total of the assets shown as assets in the LLP's balance sheet. The average number of employees is calculated by adding together monthly totals for employees employed under contracts of service in each month and dividing by 12.

Micro entities must prepare accounts with CH a copy of an abridged balance sheet and profit and loss account in section C in Part 1 of Schedule 1 of the Limited Liability Partnership (Accounts and Audit) Regulations 2008. The presence of the words "micro entity" at the foot of the balance sheet and profit and loss account is a copy of an abridged profit and loss account. Most micro entities will be able to claim exemptions for all of the following:

Small LLPs:

The small LLPs regime applies to LLPs that are not exempt from the requirement to file accounts with CH as "small" in relation to that

whether trading or not) for each financial year. The accounting reference period starts on the day of incorporation for a new LLP, or the first day after the previous financial year ends for an existing LLP. The accounting reference period ends on the day of the anniversary of the last day of the financial year, or earlier or later if the LLP so chooses. For new LLPs, the accounting reference period ends on the first day after the anniversary of the last day of the financial year (not trading) occurred.

Part 15 of the Companies Act 2006 as modified to apply the reporting requirements of Limited Liability Partnerships, Partnerships and Groups (Accounts and Audit) Regulations 2008. This guidance note will focus on the changes this has introduced, as well as the introduction of the LLP micro entity regime. There are separate guidance notes in relation to the micro entity regime.

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To qualify as “small”, at least

- annual turnover must not exceed £1 million;
- balance sheet total must not exceed £1.1 million; and
- average number of employees must not be more than 50.

In calculating these three figures, turnover must be proportionately adjusted where the financial year is not a full financial year. The balance sheet total is the total of the amounts shown as assets in the LLP’s balance sheet. The average number of employees is calculated by adding together monthly totals for employees employed under contracts of service in each month and dividing by 12.

Small LLPs and Abridged Accounts

LLPs no longer have the duty to prepare full accounts for their members. Instead, they may prepare **abridged accounts**, provided they are consistent with the regime in the Regulations.

Abridged accounts consist of a profit and loss account together with a balance sheet in accordance with Schedule 1 to the Small Limited Liability Partnerships (Accounts) Regulations 2008.

The consent procedure requires that all members of the LLP at CH a statement by the LLP that the members have consented to the abridgement. This consent must be given for each financial year and if the LLP wishes to continue to prepare abridged accounts, it must obtain unanimous consent from all members.

If LLP abridged accounts are prepared, all members will receive the same set of accounts.

Small LLPs not filing Abridged Accounts

For those small LLPs choosing to prepare full accounts, they must deliver to the Registrar at CH a copy of the full accounts for each financial year. These LLPs must also deliver a copy of the LLP’s profit and loss account. Where an audit exemption applies, the LLP must also deliver a copy of the auditor’s report. Those LLPs that file a full balance sheet and profit and loss account, must include a statement on the part of the LLP that the full accounts have been delivered in accordance with the Regulations.

Audit exemption for LLPs

A LLP must appoint an auditor for each financial year unless the designated members reasonably believe that audited accounts are unlikely to be required. A LLP is exempt from audit if it is a small LLP, a dormant LLP, or a qualifying subsidiary.

- a small LLP;
- a dormant LLP;
- a qualifying subsidiary.

qualifying conditions must be met:

- annual turnover must not exceed £1 million;
- balance sheet total must not exceed £1.1 million; and
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LLPs no longer have the duty to prepare full accounts but small LLPs may prepare **abridged accounts** – simplified accounts – provided they are consistent with the regime in the Regulations. This is subject to the LLP obtaining unanimous consent from all the LLP members. This is required for each financial year.

Abridged accounts consist of a profit and loss account together with a balance sheet in accordance with Section B, Part 1 of the Small Limited Liability Partnerships (Accounts) Regulations 2008.

The consent procedure requires that all members of the LLP deliver to the Registrar at CH a statement by the LLP that the members have consented to the abridgement. This consent must be given for each financial year and if the LLP wishes to continue to prepare abridged accounts on an on-going basis, it must obtain unanimous consent from all members.

If LLP abridged accounts are prepared, all members will not receive full accounts but will receive the same set of accounts. The accounts must be filed with CH.

For those small LLPs choosing to prepare full accounts, they must deliver to the Registrar at CH a copy of the full accounts for each financial year. These LLPs must also deliver a copy of the LLP’s profit and loss account. Where an audit exemption applies, the LLP must also deliver a copy of the auditor’s report. Those LLPs that file a full balance sheet and profit and loss account, must include a statement on the part of the LLP that the full accounts have been delivered in accordance with the Regulations.

A LLP must appoint an auditor for each financial year of the LLP unless the designated members reasonably believe that audited accounts are unlikely to be required. A LLP is exempt from audit if it is a small LLP, a dormant LLP, or a qualifying subsidiary.

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A LLP benefiting from the accounts and auditor's report to the Registrar of Companies. The preparation and filing of accounts

required to send copies of its accounts. It may file unaudited accounts with the Registrar. If it is a subsidiary, it may be exempt from the

The advantages of filing unaudited accounts are weighed against the possible drawbacks that banks and creditors may have in assessing a LLP's creditworthiness without an independent audit.

be weighed against the possible drawbacks of the information available from CH. The LLP may look for the reassurance of an

Small LLPs audit exemption

The members of a LLP that are exempt from the accounts.

maintain a right to demand copies of the accounts.

8. LLP Agreement

Whilst there is no statutory requirement for a written agreement, it is recommended that a Limited Liability Partnership Agreement can be used to set out the terms of a Limited Liability Partnership.

and Liability Partnership to have a written agreement. A practice/firm should be subject to a written agreement can be used to set out the terms of a Limited Liability Partnership.

Unlike companies, LLPs do not have a written agreement between them in order to register with the Registrar of Companies.

Memorandum or articles of association; the LLP members have a valid agreement between them in order to register their business.

As with a partnership agreement, the LLP agreement covers termination issues that all partners should be aware of. Much will depend on the circumstances. They know each other and their financial and personal.

range of financial, operational and administrative issues. Considered LLP agreements should cover the LLP, how well the members are committed to the business, both

LLP agreements should set out the responsibilities of the LLP members as well as profit share, distribution of assets, appointment/termination of members and members' responsibilities. The partnership agreement will be adapted to the particular needs of the LLP corporate vehicle, for example to produce statutory accounts.

responsibilities of the LLP members as well as profit share, appointment/termination of members and members' responsibilities. The partnership agreement will be adapted to the particular needs of the LLP corporate vehicle, for example to produce statutory accounts.

We have both a basic and a detailed LLP agreement template for customers to use.

templates for customers to use.

9. Business Legal Structure

Structure	Pros	Cons
Sole Trader	Low start-up costs Easy to set up Full control Limited liability	Full liability for debt Pay more in tax Less market credibility
Partnership	Low start-up costs Easy to set up Full control Limited liability	Full liability for debt

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	Easy to set up Full control Potential for growth	Pay more in tax Can be difficult to wind up
Limited Company	Less expensive to run Favorable tax treatment	Administrative and regulatory demands heavier Annual accounts and financial reports must be filed and in public domain
Limited Liability Partnership	Flexible income sharing agreements Advantageous for small businesses	Profit taxed as income Partners must disclose income LLPs must start to trade within a year of registration – or be struck off

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