

Briefing Note: Membership of Limited Liability Partnerships

An Introduction to the Guide

This guide provides an introduction to the status of members of the business vehicle of a Limited Liability Partnership. It is designed to be a practical resume rather than detailed technical advice. This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

1. Requirements

Members can be 'designated' either on incorporation or in accordance with an LLP agreement, giving them particular responsibilities and functions within the LLP. The choices available to members regarding designation are:

- A minimum of two members to be designated members; or
- All members to be designated members; or
- A smaller sub-set of the members to be designated members.

This choice must be made on incorporation but can be altered at any time (section 8(4), LLPA) provided that there are always at least two designated members and the relevant forms are filed at Companies House (LLP288c required for changes relating to designated members).

If there are no designated members or only one, then every member is deemed to be a designated member (section 8(2), LLPA 2000). If the members have not allocated any particular individuals to be designated members, then they are all deemed to be designated members and there is no distinction between them.

2. Obligations/Duties

The legislation relating to LLPs (the LLPA 2000, the Companies Act 1985, the Insolvency Act 1986 and the Criminal Justice Act 1967) imposes over twenty administrative obligations on designated members together with penalties for non-compliance.

These duties reflect those that would normally be carried out by a director or secretary of a company and include:

- Appointing an auditor (where appropriate)
- Signing the accounts and delivering them to Companies House
- Preparing, signing and delivering the annual return to Companies House
- Notifying Companies House of any changes to the LLP's membership, name or registered office address
- Acting on the LLP's behalf if it is wound up and dissolved

Where members choose to make a sub-set of their number designated members, some sources suggest 'sugaring the pill' by using the protection of an indemnity, against possible penalties for failure to adhere to the relevant administrative requirements. However, the penalties for failure to comply with the relevant provisions are criminal penalties and therefore any indemnity would be void as a matter of public policy.

Breakdown of powers/obligations/duties of designated members:

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April 2007

Summary:

A summary of the appointment, powers and obligations of the members of an LLP.

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2. LLPA 2000

- Required to authorise changes in designated members (s.8(5)(b))
- Required to notify the Registrar if new members join/members leave within 14 days of change (s.9(1)(a))
- Required to notify the Registrar of any change in name or address of members within 28 days (s.9(1)(b))
- Required to notify the Registrar if the LLP changes its name (Sch Part 1 Para 5)
- If Registered Office is in Wales, designated members must notify Registrar that Registered Office is so situated (Sch Part 2 Para 9)
- Required to notify change of Registered Office (Sch Part 2 Para 10)

3. COMPANIES ACT 1985 (As modified by Limited Liability Partnerships Regulations 2001)

- Duty to approve and sign accounts on behalf of members (s.233)
- Duty to deliver accounts to Registrar of Companies (s.242)
- Duty to prepare, sign and deliver annual returns (s.363)
- Appointment of Auditors (s.385)
- Where auditors not appointed, duty to notify Secretary of State that his power to appoint becomes exercisable (s.387)
- Power to fill casual vacancy in office of auditor (s.388)
- Power to appoint an auditor which is exempt from the obligation to appoint (s.388A)
- Remuneration of Auditors to be fixed by designated members (s.390)
- Power to remove Auditors (s.391)
- Duty to notify Registrar of removal of Auditor within 14 days (s.391(2))
- On request of Auditor removed and not reappointed designated members must forward representations Auditor wishes to communicate (s.391A)
- Where Auditor resigns must forward copy of resignation to the Registrar within 14 days of notice (s.392)
- On request of resigning Auditor, duty to convene a meeting in relation to resignation (s.392A) Submit entries of satisfaction and release of registered charges (s.403)
- Where application is made to strike LLP off the register, designated members must ensure that a copy of the application is forwarded to selected interested parties within 7 days (s.652A)
- Where LLP fails to make returns, Registrar may compel any designated member to make good within 14 days (s.713)

4. INSOLVENCY ACT 1986 (As modified by Limited Liability Partnerships Regulations 2001)

- General duty to act on LLPs behalf in event company is wound up or dissolved (various provisions)
- Duty to notify Registrar of voluntary winding up (s.84)
- If, after a proposal to voluntarily wind up, designated members are satisfied the LLP can pay its debts, they should make statutory declaration of solvency under s.89
- Duty to lay statement of affairs before creditors (s.99)

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If you would like to know more about this topic or our other legal services, please contact:

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