

# Briefing Note: Membership of Limited Liability Partnerships

## Introduction

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).

## 2. Obligations/Duties

The legislation relating to LLPs (including the LLPA 2000, the Companies Act 1985 and 2006 and the Insolvency Act 1986) 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.

## 3. Default Provisions

Generally, ordinary partnership law does not apply to LLPs. The rights and duties of the members between themselves and the members and the LLP are governed by an express agreement, if there is one. Any such LLP Agreement is a private document and is confidential to the members.

### Briefing Note

Updated August 2016

#### Summary:

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

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However, as with an ordinary partnership, the members of an LLP are not legally obliged to enter into any formal LLP agreement regulating the relationship between them. In the absence of a specific members agreement, the Limited Liability Partnership Regulations 2001 provide certain default provisions for LLPs including the following:-

- All members of an LLP are entitled to share equally in its capital and profits;
- The LLP must indemnify each member for payments made by it and personal liabilities incurred by him either in the ordinary and proper conduct of the LLP's business, or in or about anything necessarily done for the preservation of the LLP's business or property;
- Every member of the LLP may take part in the management of the LLP;
- No member is entitled to remuneration for acting in the business or management of the LLP;
- No person may be introduced as a member without the consent of all existing members;
- Any difference arising on ordinary matters connected with the LLP's business may be decided by a majority of the members;
- All members of an LLP must give true accounts and full information of all things affecting the LLP to other members, and his legal representatives.
- Every member of LLP may have access to the LLP's books and records and to inspect and copy them;
- If a member carries on any business that is of the same nature as and competes with the LLP's business without the LLP's consent, he must account for and pay over to the LLP all profits made by him in that other business;
- A member cannot be expelled from the LLP by a majority of the members unless a power to do so has been conferred by express agreement between them.

It is unlikely that the default provisions set out above and as further detailed in the LLPR 2001 are appropriate for most LLPs. Therefore it is usual and advisable to have an LLP agreement that adapts these default provisions.

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