



GUIDANCE NOTE 30

Limited Liability Partnerships

Updated September 2024

Introduction

The Limited Liability Partnerships Act 2009 (the "Act") provides for the creation of a form of legal entity known as a limited liability partnership.

Different types of Partnership Structures

Under Gibraltar law there are three types of Partnership Structures:

- 1) An Ordinary Partnership
- 2) A Limited Partnership
- 3) A Limited Liability Partnership

Differences between Ordinary Partnerships, Limited Partnerships and Limited Liability Partnerships ("LLP")

The main difference between the three forms of partnership is that in an ordinary partnership the liability of all of the members is unlimited and they are all jointly liable for the debts and obligations of the partnership.

In a limited partnership the internal structure differs somewhat; the management of the limited partnership is carried out by a general partner, whose liability remains unlimited as in an ordinary partnership. However the other partners are not personally liable and their liability is limited to the amount they have contributed into the partnership.

LLPs are distinct from both these forms of partnership in that limited liability is granted to all of the members, all of whom may participate in the management of the partnership. The partnership becomes a body corporate with unlimited capacity. An LLP is a legal person in its own right, with separate legal personality from that of its members. As such LLP's are required to be incorporated at Companies House. As a result, LLPs are more suited for businesses where all partners wish to take an active role in management.

It should be noted that under Gibraltar law an LLP enjoys legal personality separate from that of its members, but an ordinary partnership does not. A limited partnership may, but need not, have separate legal personality, as per section 10(1) of the Limited Partnership Act 2021. Furthermore, even though a Gibraltar limited partnership may be converted to a limited company and vice versa, there are no specific provisions for converting an LLP to a company (or a company to an LLP) in the Companies Act 2014.

In this guidance note we will only be dealing with limited liability partnerships. For more information on limited partnerships please refer to Guidance Note 22.

Liability of the members of a limited liability partnership

Liability is limited to the money that the partners invested in the business (if any), undrawn profits and any personal guarantees they have given to raise finance.

The liability of an individual member to the outside world for the debts and liabilities of the LLP in the event of winding up is limited to the sum (if any) which he has agreed with the other members or with the LLP that he will be liable to contribute, in the circumstances which have arisen, towards what is sufficient for the payment of the LLP's debts and liabilities. This sum may be nominal only (as is commonly the case for members of a company limited by guarantee). In any event the extent of such liability will be specified in the LLP agreement.

Differences between an LLP and a Company

The difference between an LLP and a limited company is that the LLP cannot issue shares, or hold share capital, nor does it have company directors. The rules that govern how shareholders interact with company assets do not apply to LLPs. The result is that an LLP has complete flexibility as regards the internal structure which it wishes to adopt: there are no requirements for board or general meetings or decision-making by resolution. Also, an LLP does not require a memorandum or articles of association. A limited company is restricted in the ways it handles all of these requirements.

Section 7 of the Act envisages that an LLP would be run according to an agreement between the members, or between the LLP and its members. However any such agreement remains confidential between the members and the LLP and does not need to be filed at Companies House, as with, for example, a company's Memorandum and Articles. In the absence of an agreement, any regulations made under section 14 (c) of the Act in order to incorporate or apply partnership law, shall apply to the LLP. The Minister has issued regulations for the management of an LLP.

Process of incorporating a Limited Liability Partnership

The subscribers (no less than two) subscribe their names to a document called an "incorporation document". The incorporation document must:

- be in a form approved by the Registrar (or as near to such a form as circumstances allow);
- state the name of the LLP;
- state the address in Gibraltar which is to be the registered office of the LLP;
- state the name and address of each of the persons who are to be members of the LLP on incorporation; and

- either specify which of those persons are to be designated members or state that every person who from time to time is a member of the LLP is a designated member.
- The incorporation document must be delivered to the Registrar of Companies together with a statement of compliance made by either a barrister or solicitor engaged in the formation of the LLP, or anyone who subscribed his name to the incorporation document, that there has been compliance with the legal requirements necessary for the incorporation of an LLP.
- Once the Registrar has received the incorporation document and statement of compliance he registers it and issues a certificate to the effect that the LLP is incorporated by the name specified in the incorporation document.

Who are the members of an LLP?

Any person, including a body corporate, may become a member of an LLP. The members of an LLP are those persons who signed the incorporation document and any other person who has since become a member by agreement with the existing members. A person will cease to become a member upon death or dissolution, by agreement with the other members or by giving reasonable notice to the other members. Membership changes are required to be notified to the Registrar.

Designated members

Whilst the LLP Act establishes the office, or role, of designated member it does not attempt any overall description or definition of the functions and responsibilities of a designated member. Generally, the designated member(s) roles will be concerned principally with requirements of the legislation as to disclosure and notification to the Registrar.

Acts by members

Members are regarded as agents of the LLP, and every member is therefore able to represent and act on behalf of the LLP.

The LLP will not, however, be bound by the actions of any member if that member had no authority to act for the LLP **and** the person dealing with the member knows that the member has no such authority, or did not know or believe him to be a member of the LLP.

Transactions by a person who is no longer a member of an LLP are still valid transactions with the LLP and the LLP is bound by them unless the third party had notice that the person was no longer a member **or** notice that the person was no longer a member has been delivered to the Registrar of Companies.

Where a member of the LLP is liable to a person (other than another member) for a wrongful act or omission in the course of the business of the LLP, the LLP is liable to the same extent as the member.

Taxation of a Limited Liability Partnership

For the purposes of taxation, an LLP is a partnership rather than a body corporate. Corporate tax will not apply. Instead, each partner will be taxed on his or its share of the income from the LLP. Where the partner is an individual, his share of income from the LLP will be taxed based on his personal income tax rate. Where a partner is a company, its share of income from the LLP will be taxed at the tax rate for companies. The existing rules imposed by the Income Tax Act on partners and partnerships shall be applied to the LLP.

Stamp Duty

Stamp duty will not be charged on an instrument transferring property from a person to an LLP in connection with the incorporation of the LLP, subject to a time limit of one year from incorporation, and subject to certain conditions being met.

Filing of Accounts and other returns

An LLP will need to file annual accounts with the Companies Registry under the Limited Liability Partnerships (Accounts) Regulations 2016. An LLP must file accounts as would be required under Part VII of the Companies Act 2014 if the LLP were a company to which that Part applied.

Guidance only

These notes are intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem we recommend that you seek professional advice.

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