

## LLP agreements

A limited liability partnership or LLP is a form of corporate body. It combines the advantages of a company (separate legal personality and members' limited liability) with the flexibility of operating as a partnership and being taxed as such.

Although particularly favoured by the professions, LLPs are also commonly used in commercial trading situations.

While there is no statutory requirement to have an LLP agreement, it is advisable to put an agreement in place. This is because the 'default' regime, which applies where there is no formal agreement, is unlikely to meet all of the members' requirements.

The default rules strive to ensure that there is equality in terms of how the members share in profits and capital. This will not always be appropriate, and if the members wish to take unequal shares they must put in place a separate agreement.

The default rules also fail to make provision for matters such as the expulsion of members from the LLP, the rights and obligations of outgoing members and commercial matters such as restrictive covenants.

A well drafted LLP agreement can help the LLP operate correctly from the outset, and can also contain mechanisms to assist the resolution of disputes between the members in the future. It is also essential if the members do not want to have equal shares in the LLP.

When considering whether to enter into an LLP agreement, the following need to be taken into account.

### Members' rights and responsibilities under the "default" rules

Unless there is a members' agreement which makes other provisions the "default" rules apply.

These include the following:

- All members share equally in the capital and profits of the LLP.
- Every member may participate in the management of the LLP.
- No member can receive remuneration for acting in the LLP's business or dealing with its management.
- Members cannot voluntarily assign their interests nor can new members join unless all the current members give their consent.
- Members must account to the LLP for profits gained in similar or competing businesses or from transactions concerning the LLP or from the use of its property, name or business connections (unless the LLP consented to the arrangement in question).
- Every member will be entitled to access, inspect and have copies of the LLP's books.
- Every member must provide true accounts and full information about matters affecting the LLP to any other member.
- The LLP must provide indemnities to members for payments and personal liabilities in certain circumstances.

These rules, by themselves, are unlikely to be a suitable basis on which to operate a business. In some respects they are too rigid, thus reducing the flexibility which is one of the key attractions of the LLP.

### What else should be considered?

Other points which will automatically be applied by the legislation to any LLP without an agreement (or with an inadequate agreement) are also potentially of concern. For instance:

- A member can leave the LLP by giving “reasonable notice” to the other members. The legislation does not define what period of notice is “reasonable” nor give any guidance on the form of notice or how it is to be given.
- Any member will have the right to bring legal action alleging that conduct of the LLP's affairs is unfairly prejudicial to one or more members (including himself) under the rules in section 459 of the Companies Act 1985.
- All members will be “designated members” with responsibility that for filing requirements (e.g. filing of statutory forms, notifying changes to the members or name or registered office, filing of the annual accounts and annual return). The law imposes penalties on designated members of defaulting LLPs, usually criminal fines.

As well as the adjustment of the “default” rules, the agreement might also cover the following matters:

- The rules and procedures governing both voluntary and compulsory cessation of membership and expulsion of members.
- Entitlements and obligations of outgoing members (including annuities, continuing liabilities, responsibilities for professional indemnity claims, indemnities in general).
- Procedures for future variations of the agreement (vital to adapt to changes of business circumstances and developments in law and practice).
- The liability level of members (if any).
- Provision for the distribution of profits and rights or restrictions on drawing of profits.
- Limitations on members’ authority including their ability to bind the LLP.
- Specific duties and obligations of members (for instance a duty of good faith, requirements to provide financial information to one another and to the LLP itself, an obligation to devote full time and attention to the LLP's business and its affairs, confidentiality and non-competition clauses).
- Procedures for approval of the annual accounts.

### Next steps

Our services start from £195.00 + VAT for a standard form LLP agreement. The agreement may be tailored for an additional fee. To order please complete either the downloadable order form or electronic form available from our website. For more information on our services please contact our Corporate Legal Services team by emailing [helen\\_goose@jordans.co.uk](mailto:helen_goose@jordans.co.uk) or telephone (0117) 918 1322.