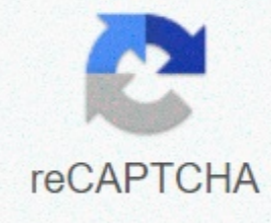




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# Llp agreement template scotland

Since the enactment of the Limited Liability Partnerships Act 2000 (LLPA 2000) it has been possible for partnerships to incorporate with limited liability in much the same way as limited companies. When it was first introduced many of the firms the Act was aimed at adopted a wait and see approach to transforming but with risk management becoming increasingly important more and more firms are taking this option more seriously. Basically a Limited Liability Partnership (LLP) is best described as being neither a traditional partnership nor a private limited company but rather a hybrid a cross between them both.Applicable Law LLPs are regulated by the LLPA 2000 the Limited Liability Partnerships Regulations 2001 and (where registered in Scotland) the Limited Liability Partnerships (Scotland) Regulations 2001 which essentially adapt and apply provisions of the Companies Act 1985 and the Insolvency Act 1986 to LLPs. Strictly speaking after the conversion partnership law will no longer apply. However LLPA 2000 contains a number of provisions which have been lifted almost entirely from the Partnership Act 1890.Incorporation To incorporate the prospective LLP must lodge a single document Form LLP2 with the Registrar of Companies together with the Registrars fee of 95. If the application is in order the Registrar will file the incorporation document and issue an incorporation certificate with the LLPs name and registered number. The incorporation document must state the jurisdiction within which the registered office of the LLP is to be situated. This cannot be altered and will determine the legal system which applies to the LLP. The incorporation document must also state the name of each person who is to become a member. However this is not set in stone and members may resign or be appointed in accordance with LLPA 2000 and any members agreement. The names of all LLPs must end with the words Limited Liability Partnership (which may be abbreviated to LLP) and if an LLP changes its name it must file a form LLP3 with the Registrar and a certificate of change of name will be issued. An application to register a name in respect of an LLP will be rejected where it is the same as a name already on the index held at Companies House it is offensive or its use would be a criminal offence.Construction An LLP will be governed by the "default provisions" set out in the LLPA 2000 and the regulations unless a members agreement (which is much like a partnership agreement) has been entered into. Entering into a members agreement is not mandatory and an LLP can be constituted without one. However reliance on the default provisions which are modelled on those which apply to an 1890 Act partnership may not be entirely satisfactory and therefore entering into a member's agreement is highly recommended. Where the LLP is formed by the incorporation of an existing partnership any partnership agreement in place does not automatically carry over. An LLP must have at least two members and a minimum of two of the members of an LLP should be designated members at any given time. Designated members are responsible for ensuring that the LLP complies with its statutory requirements and for running the LLP for the benefit of its members creditors and the LLP itself. Designated members would usually be involved in the day-to-day running of the business and would generally be taking on the same role as an executive director in a private limited company. In an LLP where some members are salaried partners it may be appropriate to consider drawing up the members agreement so that only the equity partners are designated and the salaried partners do not therefore have personal responsibility for compliance.Defining characteristics The defining characteristics of a Limited Liability Partnership are:- It is a separate legal entity distinct from its members; It has unlimited legal capacity so it can carry out any lawful act which could be performed by an individual or a traditional partnership; and The members (or partners) of the LLP have their liability limited to the extent of their original capital contribution. The legal personality of an LLP is much more robust than that of a traditional partnership. An LLP exists until it is formally dissolved under a similar process to a company it has a registered identity confirmed by a Certificate of Incorporation and an LLP can take title to property itself rather than in the name of partners as is the case with a traditional partnership. The liability of each individual member of an LLP is limited to the amount of capital agreed to be contributed. This should be specified in the members agreement. Like directors of a limited company members of an LLP generally only become personally liable for their own actions for example if they trade fraudulently or if they fail to exercise reasonable care to protect creditors if the LLP is insolvent or is likely to become insolvent in the near future. This does not mean that any person having a claim against the LLP will necessarily be in any worse position than they were against the traditional partnership. The entire assets of the LLP will be available to satisfy any claim. However its members do not have joint and several liability for the debts of an LLP as in the case with a traditional partnership.Administration An LLP is subject to many of the same administration requirements as a limited company and for example must keep statutory books. LLPs are also required to complete an annual return prepare a set of annual accounts reporting on the previous financial year appoint an auditor and register any securities granted by the LLP with Companies House. Similar forms to the ones provided for limited companies must be filed and lodged with Companies House in certain circumstances including when a new member is assumed or an old member resigns. One reason often given for retaining the traditional partnership model is that a partnership is not required to lodge accounts and therefore can maintain secrecy surrounding the partnerships financial performance. However over the past few years this has become increasingly irrelevant and generally across most sectors there is a wide understanding of comparative financial performance and the benefits of introducing a degree of transparency in this area.Capital and profits There are no rules on the regulation of capital in an LLP as there are in the case of a limited company. This means that it is possible for members to withdraw capital where this is permitted by the terms of the members agreement. Members can also withdraw profits as regulated by the members agreement and so their drawings are not limited only to payments from the distributable reserves as shareholders in limited companies are. Only members of an LLP may take an equity stake in an LLP and therefore outside investors cannot invest in an LLP and take an equity stake without becoming a member.Taxation An LLP is treated in exactly the same way as a traditional partnership for tax purposes. It is considered to be transparent for tax purposes which means that the LLP itself as a distinct legal personality does not pay tax but the profits and gains of the business are apportioned to the members who then pay tax on their respective shares of the profits and capital gains.Liability and reporting requirements of a Limited Liability Partnership (LLP) General Partnership (GP) and Limited Company (LC) This Information Note compares LLPs GPs and LCs focusing on comparing liability and reporting requirements.Limited Liability GP: no limited liability as each partner has unlimited joint and several liability for all claims made against the GP. LLP: the liability of each member is limited to the amount of capital he has agreed to contribute. There are however exceptions to this rule e.g. if the member is negligent or clearly assumes personal liability or has participated in fraudulent or negligent trading. LC: the liability of the members as owners of the LC will be limited to the amount payable on the LCs shares. A director however cannot generally be held liable for any claims against the LC unless he has acted negligently or has assumed a personal duty of care.Negligence GP: each partner has unlimited joint and several liability for the negligent acts of every other partner. LLP: a members liability for negligent acts of other members is limited to the amount of his own capital contribution into the LLP unless he has himself acted negligently or has clearly assumed personal liability. LC: a director who has acted honestly and reasonably will not generally be held liable for another directors negligence or breach of duty.Personal assets GP: each partners personal assets are at risk in the event of the negligence of any partner. LLP: the personal assets of a member who has acted honestly and reasonably will not ordinarily be at risk unless that member has acted negligently or has clearly assumed personal liability for the acts in respect of which the claim is made. There are exceptions to this general rule e.g. members may be required to contribute to the assets of an insolvent LLP for wrongful or insolvent trading. LC: a director who has acted honestly and reasonably is likely to avoid personal liability although director may be liable to fines for various statutory offences and may be required to contribute to the assets of an insolvent LC in the event of wrongful or insolvent tradingAdministration and reporting requirements GP: is not subject to any administration and reporting requirements and does not need to disclose any information about its business externally. LLP: is subject to administration and reporting requirements similar to those imposed on LCs. It must for example submit incorporation documentation to Companies House maintain statutory books submit an Annual Return to Companies House and prepare audited Annual Accounts for submission to Companies House. In addition an LLP is required in certain circumstances to complete and file forms with Companies House similar to those provided for LCs e.g. when a new member is assumed or an old member resigns. LC: is subject to extensive administration and reporting requirements similar to those mentioned above for LLPs.Tax aspects of Limited Liability Partnerships(LLP) General Partnership (GP and Limited Company (LC) This Information Note focuses on tax aspects of these three types of business entity.General tax status Members of an LLP are self-employed and are taxed individually. Partners of a GP are self-employed and are taxed individually. A LC is a separate entity and the directors are classed as employees. A LC pays tax on its profits and gains. Shareholders of a LC pay tax on dividends received and on gains arising from the disposal of shares.Rate of tax Individual members of an LLP are taxed under Schedule D income tax at 10-40%. (Corporate entities which are members are taxed under corporation tax at 0-30%.) Partners of a GP are taxed under Schedule D income tax at 10-40%. A LC is taxed under corporation tax at 0-30%. Directors are taxed under Schedule E income tax at 10-40%. LCs pay corporation tax 9 months after the year end. In practice most large companies pay quarterly. Directors pay tax monthly through PAYE and also pay tax on benefits-in-kind at the year end.When are profits assessed? LLP profits are assessed on the current year basis. GP profits are assessed on the current year basis. LC profits are assessed at the accounting year. A directors income tax liability is assessed at the fiscal tax year.Pensions contributions LLP personal pension contributions by individuals are restricted to between 17.5% and 40% of relevant earnings dependant on age. There is a restriction to the first 102000 of the net earnings for the tax year to 2004-2005. GP personal pension contributions by individuals are restricted to between 17.5% and 40% of relevant earnings dependant on age. There is a restriction to the first 102000 of the net earnings for the tax year to 2004-2005.3National insurance National insurance contributions for individuals within a LLP are Class 2 (2.05 per week) and Class 4 (8.0% of net profits between the limits of 4745 and 31720 and at 1% above 31720). LCs pay Class 1 national insurance contributions for their employees (at the rate of up to 12.8% on directors remuneration). These contributions are tax deductible. Directors themselves pay 11% between 4732 and 31720 and at the rate of 1% above 31720.VAT status LLPs usually have to register for VAT. GPs usually have to register for VAT. LCs usually have to register for VAT.Interest on borrowing by individuals and the business LLP interest on borrowings is tax deductible. GP interest on borrowings is tax deductible. LC interest on borrowings is usually a tax deductible expense or a charge against profits.Interest on borrowings by individuals for the purpose of investing in the business LLP interest on borrowings is usually tax deductible subject to restrictions. GP interest on borrowings is tax deductible. LC directors interest on loans to company is tax deductible in certain circumstances. For shareholders it is tax deductible subject to restrictions.Rate of tax on capital gains For a LLP after annual exemption the rate of tax is 10-40%. For a GP after annual exemption the rate of tax is 10-40%. For a LC the rate of tax is 0-30% with indexation. Directors pay tax at the rate of 10-40% after annual exemption.Stamp duty and stamp duty land tax liable when an interest in the business transfers There is normally no stamp duty when a new member is admitted or a member retires from a LLP. However there may be a charge to stamp duty land tax if the GP has or obtains an interest in land. There is normally no stamp duty when a new member is admitted or a member retires from a GP. However there may be a charge to stamp duty land tax if the GP has or obtains an interest in land. When shares are sold in a LC stamp duty is normally payable at 0.5% of the price.How we can help We can advise on the right type of business entity for you and prepare the relevant forms and LLP member's agreement for you to incorporate your LLP and advise you on the dos and donts of starting a business in this way. We can also advise you on compliance issues.

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