

The Pictons Director Guide to Limited Liability Partnerships (LLP)

The LLP was developed in the UK in response to pressure from professional firms for more protection from liability than was possible with existing partnership law, while retaining the flexibility and tax advantages associated with a [partnership](#).

An LLP must involve two or more persons (individuals or companies) carrying on a business **with a view to profit**; this latter provision means that LLPs are not suitable for [charities](#) and other not for profit organisations.

The key features of an LLP are:

- Limited liability for its members
- It is a separate legal entity
- It is taxed as a partnership
- It has the organisational flexibility of a partnership
- Any members' agreement (LLP agreement) is a private document which is confidential to the members
- Its accounting and filing requirements are broadly the same as those of a company
- It has the ability to create floating charges

Membership

Membership of an LLP combines ownership with the right to manage the business. It is governed by a member's agreement similar to a partnership agreement with considerable freedom to agree whatever terms the members wish and the ability to alter the terms in the future.

If you are disqualified as a company director you cannot be a member of an LLP.

Taxation & Regulation

Members are taxed on their share of the profits with no employers' national insurance payable on members' profit shares. Corporation tax is charged on a company's profits and does not apply to LLPs.

In exchange for being given limited liability, LLP's are required to disclose similar information to that required of companies, including information on finances and on its members. Among other things, they are also required to:

- file an annual return
- notify any changes to the LLP's membership
- notify any changes to their members' names and addresses
- notify any change to their registered office address

Debts

An LLP is liable for its own debts but the member's liability is limited to the capital they have contributed or committed. The position is much like being a company director you lose your investment but not your house. Because of the limitation in liability banks and landlords may want personal guarantees.

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Insolvency

The process is similar to that which applies to companies under the Insolvency Act so members involved in wrongful or fraudulent trading can be ordered by the court to contribute to the LLP's assets

Converting from a partnership to an LLP

For many partnerships, the attraction of limited liability makes the decision to convert to an LLP fairly straightforward however it is important that all your partners understand the implications and support the change.

Unlike the **Partnership Act** the LLP is a recent piece of legislation with a more current set of default rules which operate in the absence of a specific agreement. There are differences between partnership agreements and LLP members' agreements, but if your current partnership agreement is fairly comprehensive and up to date you should be able to retain the essence of it.

There will have to be a transfer of assets from the partners to the LLP, but stamp duty is not chargeable on that transfer if the members of the LLP are the same as the original partners, and they hold the assets in the same proportions (or different proportions provided this is not to avoid liability to tax or stamp duty) Generally the conversion from partnership to LLP should be tax neutral.

If you are converting an existing partnership to an LLP the bank's consent will be required to transfer overdrafts and borrowings of the partnership to an LLP. As the bank's level of security will be less in respect of an LLP than a partnership, the bank may require personal guarantees from the LLP's members. Similarly a landlord's consent will be required to transfer a lease from the partnership to an LLP. The extent to which this consent can be withheld may depend on exact terms of the lease. Again, personal guarantees may be required as the landlord's security will be reduced in respect of an LLP. Consideration should be given as to whether any significant contractual liabilities of the partnership need to be transferred.

Legal Formalities

An LLP will be registered by sending Companies House Form LLP2 with the details of the name of the LLP, address including country where the registered office is situated, name and address of each LLP member and the identities of the designated members (there must be at least two designated members responsible for sending documents to Companies House). Form LLP2 also includes a statement, signed by a solicitor or a proposed member that the persons who have subscribed to the incorporation document are "associated for carrying on a lawful business with a view to profit".