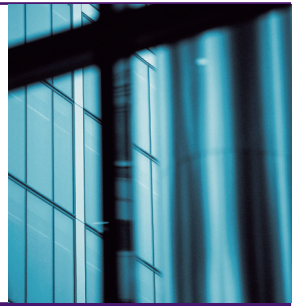


Review

Corporate Strategy & Finance



Limited liability partnerships: impact of the Companies Act 2006

Introduction

Limited liability partnerships (LLPs) continue to be governed primarily by the Limited Liability Partnerships Act 2000 (the LLP Act). However, the regulations made under the LLP Act in 2001 and 2002 which applied the Companies Act 1985 to LLPs have been replaced by new regulations applying provisions of the Companies Act 2006 (the 2006 Act) instead.

The application of the 2006 Act to LLPs has been achieved by way of a staged process. The 2006 Act's provisions regarding the timing for filing LLP accounts came into effect for financial years beginning on or after 6 April 2008, while the account and audit provisions of the 2006 Act have governed LLPs since 1 October 2008 for financial years beginning on or after that date.

On 1 October last year, *The Limited Liability Partnerships (Application of Companies Act 2006) Regulations (SI 2009/1804)*, as amended by *The Limited Liability Partnerships (Amendment) Regulations (SI 2009/1833)*, applied the remaining relevant provisions of the 2006 Act to LLPs.

Jurisdictional changes

There had previously been a separate legislative regime for LLPs in Northern Ireland. However, the new regime now applies to Northern Ireland as well as to England, Wales and Scotland.

Register of members and register of members' residential addresses

Under the old regime, LLPs did not, as a general rule, need to keep a register of members. With effect from 1 October 2009, however, all LLPs must keep such a register.

For a member who is an individual, the register must contain the following information:

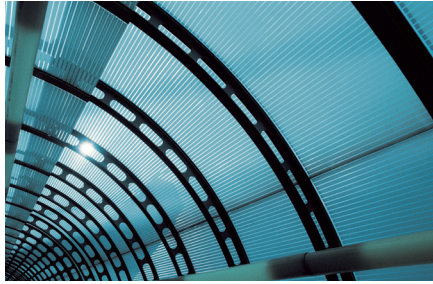
- his name (and any former name used for business purposes in the previous twenty years)
- his service address
- the country or state or part of the United Kingdom in which he usually lives
- his date of birth
- whether he is a designated member.

For a corporate member or firm, the register of members must contain the following information:

- its corporate or firm name
- its registered or principal office
- in the case of an EEA company¹, the place of registration and registration number
- in other cases, the legal form of the company or firm and the law by which it is governed and, if applicable, where registered and its registration number
- whether it is a designated member.

In this article, we discuss the application of the Companies Act 2006 to limited liability partnerships and highlight some of the changes introduced by the new regime.

¹ An EEA company is one incorporated in a member state of the European Economic Area. These states comprise the member states of the European Union plus Iceland, Liechtenstein and Norway.



The provisions of the Companies Act 2006 which protect the residential addresses of company directors have been applied to members of LLPs.

The details contained in the register of members must be filed at Companies House.

Members are entitled to inspect the register of members free of charge while third parties may inspect it on payment of a fee. If the register of members is not kept at the LLP's registered office, the LLP must notify Companies House of its location.

The provisions of the 2006 Act which protect the residential addresses of company directors have been applied to LLP members. Accordingly, with effect from 1 October 2009, LLPs must also keep a register of the residential addresses of those members who are individuals. This register is not to be made available for public inspection. The member's residential address must also be filed at Companies House but will not be disclosed on the public record.

Unless the member agrees or unless otherwise ordered by the court, the LLP may only use the residential address of a member in order to communicate with that member or to up-date the record at Companies House.

The requirement for a minimum of two members continues: new rules apply when membership falls to one

As before, there is no upper limit on the number of members of an LLP and, although an LLP must have a minimum of two members, it will continue to exist even if the membership is reduced to one. However, a new sanction has been introduced in the event that the requirement for a minimum of two members is not met: an LLP with one member may continue to trade but, if it does so for more than six months, it will lose its limited liability status and the sole member will be jointly and severally liable with the LLP for debts incurred outside the six month period.

In another change made by the new regime, a sole remaining member of an LLP may apply for its voluntary striking off. Under the old rules, application had to be made by two or more designated members.

Trading disclosures

The new rules regarding the trading disclosures to be made by LLPs are, briefly, as follows:

An LLP must display its registered name:

- at its registered office
- at any 'inspection place'²
- at any other location at which it carries on business (unless that location is used principally for living accommodation).

The information that an LLP must display on its documents will depend on the nature of the document and the rules will apply whether the document is in hard copy, electronic or other form.

The LLP's registered name must appear on the following: notices and official publications; bills of exchange; promissory notes; endorsements; cheques; orders for money, goods or services; bills of parcels; invoices and other demands for payment; receipts; letters of credit; applications for licences to carry on a trade or activity and all other forms of business correspondence and documentation not already mentioned.

Business letters, order forms and websites must contain the following, more detailed, information: the LLP's registered name, number and registered address together with the place of registration and, where the LLP's name ends with the abbreviation 'LLP', a statement of the fact that it is a limited liability partnership.

² An 'inspection place' is any location (other than a LLP's registered office) at which a company keeps any LLP records available for inspection as required by the 2006 Act (for example, the location of its register of members).



The names of every member of an LLP must be included in any business letter which contains the name of any member of the LLP (other than as text or signatory). There is an exception for those LLPs with more than twenty members which keep a full list of members' names at their principal place of business provided that the letter gives that address and confirms that the list may be inspected there.

Further, if an LLP receives a written request from any person with whom it has a business relationship as to the address of the LLP's registered office or any inspection place (and the type of records kept at either location), it must respond in writing within five working days.

Execution of documents

An LLP, like a company, may now execute a deed in one of three ways:

- by affixing its common seal (if it has one: this is optional)
- by the signature of two members
- by the signature of one member made in the presence of a witness who attests the signature.

Application for administrative restoration to the register

There is a new administrative procedure whereby application may be made to Companies House to restore to the register an LLP which has been struck off and dissolved.

The new procedure, which does not require a court application, is available only to former members of the LLP and is subject to a number of conditions which include the following:

- that the LLP was carrying on business or was in operation at the time it was struck off
- that, if any property of the LLP has passed to the Crown (under the rules on bona vacantia), the Crown representative agrees to the LLP's restoration to the register
- that the applicant delivers to Companies House all documents necessary to bring the LLP's filing up-to-date and pays any outstanding penalties
- that the application for restoration is made within six years of the date of dissolution.

How Hammonds can help

We would be pleased to discuss with you in more detail any of the matters raised in this article.

In addition, our Company Secretarial Unit would be pleased to advise you on the new Companies House forms and filing requirements for LLPs.

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in one of three
ways.

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