

APPLICATION OF THE REMAINING (NON-ACCOUNTS AND AUDIT) PROVISIONS OF THE COMPANIES ACT 2006 TO LIMITED LIABILITY PARTNERSHIPS

Introduction

1 Regulations applying the accounts and audit provisions of the Companies Act 2006 (2006 Act) to limited liability partnerships (LLPs) came into effect for financial years beginning on or after 1 October 2008¹.

2 The draft regulations, published for comment with this document, will apply the remaining relevant provisions of the 2006 Act to LLPs. These regulations will be laid before Parliament for debate early next year and will come into effect on 1 October 2009 to coincide with the remaining implementation of the 2006 Act for companies.

3 This document provides a brief summary of the provisions of the 2006 Act that will be applied through the draft regulations to LLPs.

Provisions to be applied to LLPs

4 The following provisions of the 2006 Act will be applied (with appropriate modification) to LLPs through the draft regulations:

- **Formalities of doing business under the law of England and Wales, Scotland or Northern Ireland (e.g. execution of deeds and documents)**
- **LLP Names – application of the company name provisions**
- **Trading Disclosures**
- **LLP Members' Names and Addresses – application of the provisions on company directors' names and addresses**
- **Debentures**
- **Annual Returns**
- **Charges**

¹ The Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 (S.I. 23008/1911); the Small Limited Liability Partnerships (Accounts) Regulations 2008 (S.I. 2008/1912) and the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (S.I. 2008/1913).

- Arrangements, Reconstruction and Cross-Border Mergers
- Fraudulent Trading
- Protection of Members against Unfair Prejudice
- Dissolution and Restoration
- Overseas provisions - very limited application equivalent to Companies Act 1985 (1985 Act) provision already applied to LLPs
- The Registrar of Companies
- Offences
- Supplementary provisions
- Consequential Amendments and Transitional provisions

N.B. Where the draft Regulations are applying to LLPs provisions of regulations under the 2006 Act which are yet to be made, these have been placed in square brackets.

Points to note

5 There are a few areas where application of the provisions will result in some changes for LLPs:

6 Trading Disclosures

Provisions of the 2006 Act on trading disclosures, including the regulations made under those provisions, will be applied to LLPs. These replace the provisions of the 1985 Act requiring a company to display the company name outside its place of business and on correspondence and section 4 of the Business Names Act 1985 which will be repealed on 1 October 2009. The 1985 Act provisions on company identification and the Business Names Act currently both apply to LLPs (see below).

7 LLP Members' Names and Addresses - Register of members

Currently under section 2 of the Limited Liability Partnerships Act 2000 (the LLP Act) when an LLP incorporates it is required to deliver the incorporation document to the registrar of companies. This must state the name and address of each person who is to be a member of the LLP and specify which of those persons are to be designated members or state that every person who from time to time is a member is a designated member.

Under the Business Names Act 1985, LLPs that use a business name different from their corporate name must state on all business documents the corporate name of the LLP and the name of each member and an address for service. This does not apply to documents issued by LLPs with more than 20 members, provided they maintain at their principal place of business a list of the names of all members. If a list is available, members' names do not have to appear on the documents (other than in the text or as a signature) and the document must state that a list of members is available for inspection at the principal place of business. Other than in relation to the provisions of the Business Names Act 1985 an LLP is not currently required by statute to keep a register of members for inspection (although certain professional bodies may require LLPs to keep a list of members available).

From 1 October 2009 sections 162 to 165 of the 2006 Act on the register of directors' names will be applied to members of LLPs, with modifications. This will mean an LLP will have to keep a register of members containing certain particulars, including a service address for each individual member and whether a member is a designated member. The LLP must give notice to the registrar of companies of the place at which the register is available for inspection and any changes in that place – unless it is kept at all times at the LLP's registered office. It must also be open for inspection by any member of the LLP without charge and by any other person for a fee.

LLPs will also have to keep a register of each member's usual residential address. However, where a confidentiality order under section 723B of the 1985 Act, as applied to LLPs, was in force prior to 1 October 2009 particulars of the usual residential address, if contained in the register of members, do not have to be available for inspection. LLPs will still have to provide the registrar with the incorporation document under section 2 of the LLP Act, but this will be amended to provide that in the case of each member the document must state the particulars required in the register of members under sections 162 to 165 of the 2006 Act as applied to LLPs.

LLPs will need to comply with these new requirements from 1 October 2009.

The new provisions on protection from disclosure of addresses in sections 240 to 246 of the 2006 Act will also be applied to LLPs.

8 LLP - requirement to have at least two members

Under section 2(1)(a) of the LLP Act an LLP is required to have 2 or more members. From 1 October 2009 section 4 of the LLP Act will be amended by the draft regulations to reproduce the effect of section 24 of the 1985 Act which is currently applied to LLPs. If an LLP carries on business without at least two members for more than 6 months the remaining member is liable (jointly and severally with the LLP) for the debts contracted during the period.

In addition, the new provision in section 156 of the 2006 Act is to be applied to LLPs. This will enable the Secretary of State to enforce the requirement that an LLP have at least two members by issuing a direction to the LLP. The direction

must specify the requirement breached, what must be done to comply and the period within which this must be done. This is a change from the current position where the only enforcement option available is to consider striking the LLP off the register.

9 The Registrar of Companies - Part 35 of the 2006 Act

Some of the provisions of Part 35 apply automatically to LLPs. Where this is not the case, certain of those provisions will be applied (with modification) to LLPs. Regulations and registrar rules made under Part 35 will also apply to LLPs.

10 Supplementary provisions - E-Communications

The draft regulations apply sections 1143 to 1148 of the 2006 Act on the sending by or supplying to LLPs of documents or information in hardcopy or electronic form. Section 1143 (1) provides that LLPs can apply the communications provisions in sections 1144 to 1148 if and to the extent that the members so agree. So the members of an LLP can either opt to follow those provisions or agree separately the method of communications the LLP wishes to use. We would welcome views on this approach.

11 Transitional provisions

The transitional provisions in the draft Regulations correspond to the transitional provisions for companies contained in the Companies Act 2006 (Commencement No. 8, Transitional Provisions and Savings) Order 2008.

How to respond

12 The Department for Business, Enterprise and Regulatory Reform (BERR) invites comments on the draft regulations; on the issues set out in this document and on the costs and benefits, set out in the accompanying draft impact assessment.

13 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

14 You are invited to send comments, preferably by email to:

ConsultationImplementation2008@berr.gsi.gov.uk

Please send comments by **28 January 2009**.

If by letter, then to:

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