



Companies Act Update 2006

Application to LLPs

As you will know from our previous briefings the final provisions of the Companies Act 2006 were introduced on 1 October 2009. This briefing sets out a summary of those provisions of the Companies Act which apply to Limited Liability Partnerships (“LLPs”), introduced by the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (as amended) which also came into effect on 1 October 2009:

1. There are no changes relating to the structure and incorporation procedures of an LLP. It is still considered essential that a suitably drafted members agreement is put in place to govern many of the workings and rights of the members.
2. **Executing documents** - The new provisions in the Act regarding execution of deeds are applied to LLPs so that one member of an LLP can sign an executed deed provided that this is suitably witnessed (sections 43-47).
3. **Corporate names** - The provisions governing what names are acceptable for an LLP are introduced in the same manner as for companies (Part 5 of the Act).
4. **Trading disclosures / Notepaper** - The trading disclosures regime (sections 82-83 of the Act) are applied to LLPs. These state that, if an LLP is to name a member on its notepaper then it must name them all (except that if an LLP has more than 20 members it can make a statement on its notepaper that a list of the full membership is available for inspection at the principle place of business).
5. **Member’s home addresses** - The provisions of the Act regarding restricting from public disclosure of members’ residential addresses are applied to LLPs (section 162–165 and 240-246 of the Act).
6. **Security** - Provisions governing entry into, formation, registration and priority of security debentures and mortgages executed by LLPs (contained in sections 738-754 of the Act) are applied to LLPs.
7. **Annual Return** - Provisions regarding submission of an annual return by each LLP (but omitting all references to shares and share capital) are applied to LLPs (section 856).
8. **Fraudulent trading** - Provisions prohibiting fraudulent trading by LLPs contained in the Companies Act apply (section 993).
9. **“Unfair Prejudice of members”** - Protection from members of LLPs from “unfair prejudice” are applied to LLPs (sections 994-997) but are amended so that:

- (i) the removal of an LLP auditor can be treated as unfairly prejudicial to the interests of some part of the LLPs membership; and
 - (ii) an LLP can unanimously exclude such rights in suitably drafted members' agreement
10. **Dissolution** - The provisions regarding strike off and for dissolving an LLP (contained in sections 1000-1003) of the Act are applied to LLPs (including the new procedures for "administrative restoration" referred to in our earlier briefings).
 11. **Companies House** - The provisions of the Act confirming that the Registrar of Companies in Cardiff as the administrative agency for dealing with regulating the functions of LLPs (contained in part 35 of the Act) are confirmed.
 12. **Accounts** - Most of the provisions regarding treatment and content of accounts and audit provisions were all introduced in prior legislation and have been in effect since 1 October 2008. These include provisions regarding filing deadlines (nine months), calculation of accounting periods and penalties for late filing of accounts.

Which provisions in the Companies Act are not applied to LLPs?

1. **Codified directors duties** - The codified list of duties of a company director (which are expansive) are not applied to members of an LLP, because the position of members in an LLP does not equate to that of directors within a company. The government takes the view that there is no legal distinction between the owners of an LLP and its management (unlike directors vs shareholders) and there is also no equivalent body of case law in which to base a codification of LLP members' duties. This must all be set out and determined in a suitably drafted members' agreement and permit LLPs continued flexibility to regulate their own members' management and respective duties. As such it remains as critical as ever to ensure there is a suitably drafted members' agreement where an LLP is to be formed.
2. **"E-Communications"** - The provisions of the Act regarding e-communications in obtaining member's approval to certain matters are not applied to LLPs, and again such matters should be dealt with in a suitably drafted members' agreement.
3. **Legal action** - Provisions permitting "derivative claims" by members of an LLP contained in the Companies Act are not applied to members of an LLP (as there is existing protection within the civil procedure rules for members of an LLP who wish to pursue a right of action belonging to the LLP).

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