

# LIMITED LIABILITY PARTNERSHIPS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Membership*

##### *Section 4: Members*

*Subsection (1)* The first members of an LLP are those who signed the incorporation document.

*Subsection (2)* After incorporation, any person may become a member of an LLP by agreement with the existing members.

*Subsection (3)* A person may cease to be a member by death, dissolution and in accordance with any agreement with the other members of the LLP. Where there is no agreement a member may cease to be a member by giving reasonable notice to the other members.

*Subsection (4)* A member of an LLP will not be regarded as an employee of the entity, unless, if he and the other members were partners in a partnership, he would be regarded as an employee.

##### *Section 5: Relationship of members etc*

*Subsection (1)* deals with the relationship between members. The rights and duties of the members of an LLP to one another and to the LLP are governed by the provisions of any agreement between the members, subject to the provisions of any enactment. The Act does not require an agreement to be entered into between the members and there is no requirement to publish it (although, as noted in paragraph 17 above, there will be clear advantages in an LLP having a formal written agreement). In the case where there is no agreement on any matter the mutual rights and duties of the LLP and its members will be governed by default regulations made under section 15(c). The default regulations (see paragraph 12 above) will make provision concerning various matters, including the entitlement of members to share equally in the capital and profits of the business and that every member may take part in the management of the LLP

*Subsection (2)* provides that when an LLP comes into being it is bound by the terms of any agreement that is entered into by the subscribers to the incorporation document.

##### *Section 6: Members as agents*

*Subsection (1)* Each member of the LLP is an agent of the LLP. Each member may, therefore, represent and act on behalf of the LLP in all its business (subject to subsection (2)).

*Subsection (2)* An LLP is not, however, bound by the actions of a member where that member has no authority to act for the LLP, and the person dealing with the member is aware of this or does not know or believe that the member was in fact a member of the LLP.

*Subsection (3)* Transactions with a person who is no longer a member of an LLP are still valid transactions with the LLP, unless the other party has been told that the person is no longer a member, or the registrar has received a notice to that effect.

*Subsection (4)* ensures that where a member of an LLP is liable to a person (other than another member of the LLP) for a wrongful act or omission in the course of business of the LLP or with its authority, the LLP will be liable to the same extent as the member.

### ***Section 7: Ex-members***

This concerns the situation where a person ceases to be a member of an LLP, or his interest in the LLP is transferred to another person. A former member, the member's personal representatives, the member's trustee in bankruptcy or liquidator or the trustees under the trust deed for the benefit of his creditors or assignee may not interfere with the management or administration of the LLP, but may receive any amount to which they are entitled.

### ***Section 8: Designated members***

In general, the role of designated members is to perform the administrative and filing duties of the LLP. However, some provisions of the Companies Act 1985 and the Insolvency Act 1986, as intended to be applied by regulations under the Act, will place on them tasks which go beyond the mere administrative and in the performance of which they would be representing all the members of the LLP, for example, the signing of the LLP's accounts.

*Subsection (1)* provides that, where the incorporation document specifies that certain members are to be the designated members, then they will be the designated members on incorporation. Other members may become designated members by agreement with the members. A member may cease to be a designated member by agreement with the other members.

*Subsection (2)* requires there to be at least two designated members and provides that if no members or only one are designated then all members are designated members.

*Subsection (3)* provides that if the incorporation document states that every person who is a member of the LLP is a designated member then all persons who are from time to time members are designated members.

*Subsection (4)* permits the LLP to notify the registrar that all members of the LLP are designated members or that specified members will be designated. Where the LLP notifies the registrar the effect will be as though it had been stated in the incorporation document.

*Subsection (6)* explains that when a person ceases to be member of the LLP he will also cease to be a designated member.

### ***Section 9: Registration of membership changes***

*Subsection (1)* provides that where a person becomes or ceases to be a member or a designated member the registrar must be notified within fourteen days and that a change in the name or address of a member must be notified within twenty eight days.

*Subsection (2)* states that where all the members of an LLP are designated members notification only needs to be given that a person has ceased to be a member and there needs to be no separate notification that they have ceased to be a designated member.

*Subsection (4)* provides that, where subsection (1) is not complied with, the LLP and all designated members commit an offence.

*These notes refer to the Limited Liability Partnerships Act 2000 (c.12) which received Royal Assent on 20 July 2000*

*Subsection (5)* explains that a defence to subsection (4) is available for designated members if they can prove that they took all reasonable steps to ensure that subsection (1) was complied with.

*Subsection (6)* explains that where a person is guilty of an offence under subsection (4) they would be liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).