




An Update from Stanley Davis Group

Issue no. 18



New rules for Limited Liability Partnerships

New Regulations applying the terms of the Companies Act 2006 to LLPs will come into effect on 1 October 2009. Important changes include:

Names

Currently it is possible to form a limited company with the same name as an existing LLP. From 1 October the same rules will apply to companies and LLPs.

Minimum Membership

LLPs will still need to have 2 or more members but after 6 months a sole member will be jointly and severally liable with the LLP for debts incurred after expiry of the 6 month period.

Members' Details

Every LLP will be required to keep a register of members containing a service address for each individual member. The LLP must tell Companies House where the register is available for inspection unless it is held at the registered office. The register must be open for inspection by members free of charge and for any other person on payment of a fee. Residential addresses will need to be kept on a separate register and disclosed only to the Registrar of Companies.

Publication of Details

The new trading disclosures regime which applies to companies will apply equally to LLPs from 1 October. This will require LLPs to display their name and registered office at their registered office and any other business location, the name need not be placed on the outside of a building but must be in a place clearly visible to any visitor. The LLP's name, number and details must also be included on correspondence including emails and on any website.

Accounts

The same penalties which apply to companies for late filing of accounts will apply to

LLPs for financial years beginning on or after 1 October 2008. These have increased and now start at £150 just for a one month delay in filing, so it is particularly important that accounts are filed on time. Incidentally, the method by which penalties could be avoided as long as accounts were filed within 14 days of the filing deadline shall cease to exist from 1st October 2009. A company or an LLP will therefore no longer have 14 days from the date of the rejection letter in which to amend and return accounts in an acceptable format.

Auditors

Audit reports for LLPs will need to be signed by the senior statutory auditor who is a named individual for years commencing after 1 October 2008.

Service of Documents

The new rules for companies contained in Sections 1139 to 1142 of the 2006 Act will apply to LLPs. These clarify what addresses are valid for the purposes of service of documents and define "service".

Execution of Documents

In England and Wales and Northern Ireland a document is to be executed by an LLP by applying its common seal, by signature of two members or by signature of a member of the LLP in the presence of a witness. An LLP may by a document executed as a deed empower a person as its attorney to execute deeds or other documents on its behalf and a deed or document so executed in the UK or elsewhere will have effect if executed by the LLP. Execution formalities in Scotland remain unchanged.

New Registrar's Rules

Companies House published the final draft of the new registrar's rules on 1 July.

This will be the final draft of the regulations published before they come into force on 1 October as part of the final Companies Act 2006 implementation.

The draft is not intended for general comment, as the Registrar carried out a consultation last year and only minor details now remain to be finalised. Companies House says that the draft's principal function is to give companies advance notice of the new regime.

Additionally, though no concrete date has been given for the publication of the draft forms, Tim Moss, Director of Corporate Strategy at Companies House, says that the registrar intends to publish them 'very soon' after 1 July, along with guidance for companies on the new powers.

First draft of partnership law update published

On 1st July, the Department of Business Innovation and Skills (BIS) (see below) published the first draft of the proposed reform of limited partnership (LP) law.

The draft covers two basic elements of limited partnership law – conclusive registration, and names indicating LP status.

The proposal for conclusive registration would mean that limited partnerships would be effective from the date on the certificate of registration, and that the certificate would

become the conclusive document for demonstration that the LP existed. This provision is designed to counter concerns that uncertainty about precisely when a partnership is deemed to have been formed has deterred individuals from entering into a partnership.

The second proposal provides that LPs must include in their name a suffix to indicate that they are a limited partnership ('LP', 'limited partnership', or equivalent). This provision would only apply to LPs registered after the effective date of the new legislation, so existing LPs would not have to re-register themselves.

Further details can be found at www.berr.gov.uk/files/file51586.pdf.

EU Shareholder Rights Directive

The latest draft of the legislation to implement the EU Shareholder Rights Directive (SRD) has been published.

The new draft of the statutory instrument required to bring in the provisions of the SRD includes those suggestions received during the consultation period that ended in January.

Although the vast majority of the changes are simply to clarify wording or remove redundant phrasing, there are some sections that have been redrafted. Those sections that deal with a company's obligation to circulate shareholder resolutions have been altered in favour of the company. In previous drafts of the SRD, companies would have to bear the cost of circulation regardless of the circumstance. In the latest draft however, companies may refuse to bear the cost should the resolution not be of interest to a substantial section of shareholders, or if the resolution is not submitted to the company by the time the meeting has been announced.

Also altered are the sections that deal with notice periods for meetings other than the AGM. The wording now contains a clause to allow companies to declare other general meetings at 14 days' notice provided that i) the company has provision in place to allow members to vote electronically, and ii) a special resolution specifically reducing the notice period has been passed.

Economic Operator Registration Identification

On 1 July 2009 the European Union (EU) introduced a new identification system for businesses and individuals who import from or export to countries outside the EU. The new system is called Economic Operator Registration and Identification (EORI). Under the new system each business and individual will be allocated a unique number which will be recognised on customs declarations in any one of the 27 Member States and will identify the business/individual to Customs.

In the UK, EARI will replace the existing Trader Unique Reference Number (TURN) system. If you have not been notified by Customs of your EORI number; then you will need to apply for one. Details on how to apply including the application form as well as further information about the scheme can be found on the HMRC website EORI Scheme Home Page or call the National Helpline on 0845 010 9000.

Government Departments to merge

The Government has created a new department by merging the business and higher education divisions.

The new department for Business, Innovation and Skills (BIS) has been formed through the merging of the Department for Business, Enterprise and Regulatory Reform (BERR) and the Department for Innovation, Universities and Skills (DIUS). The current Business Secretary, Lord Mandelson, will head up the new department.

Have Your Say!

We welcome your feedback. Please spare some time to complete a brief online survey at

http://www.surveymonkey.com/MySurvey_EditorPage.aspx?sm=xEvpvbnJtcxki3ckBeE6yq3wQq9HBxfLo7lbbjEDEel%3d

It should take no more than two minutes and your input will help us to improve our service.

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