Limited Liability Partnerships
New Requirements – Guidance Note

It is often tempting to think that running a business by way of a limited liability partnership (‘LLP’) avoids much of the bureaucracy associated with a traditional company structure. However, following the coming into force of recent legislation and regulations, this advantage is reducing.

In this note, we consider some of the requirements that now affect or that will shortly affect LLPs. It is important that LLPs consider and prepare accordingly for these changes so as not to find themselves in breach of the provisions and compromise business continuity.

Please note that the following is a non-exhaustive summary of some of the most significant changes which should be taken into account when running an LLP. Please do not hesitate to contact us should further guidance be required as to the obligations of LLPs.

PSC Register:

The Small Business, Enterprise and Employment Act 2015 (‘SBEEA 2015’), which received royal assent on 26 March 2015, extends the provisions of the Companies Act 2006 (‘CA 2006’) to LLPs in respect of the maintaining of a register of people with significant control (‘PSC’).

A significant corporate aim of the SBEEA 2015 is to increase transparency as to those controlling UK companies and to support authorities in deterring and sanctioning those who hide their interests. As such, as of 6 April 2016, LLPs will be required to maintain a PSC register and, from 30 June 2016, to file this information with the central public register at Companies House. From June 2016, those seeking to incorporate a new LLP will be required instead to send a statement of initial significant control to Companies House, together with the
other documents required for an application to incorporate. The public register will be freely available online and searchable by company and individual.

Who is a PSC?

Broadly speaking, a PSC is an individual who has the right to share in more than 25% of any surplus assets of an LLP or who ultimately owns or controls more than 25% of members’ rights to vote, or who otherwise exercises ‘significant influence or control’ over the LLP.

An LLP will therefore be under a duty to take reasonable steps to identify members with significant control and to keep its PSC register up to date. Individuals with significant control will be under a corresponding duty to notify the LLP of their interest. In both cases, failure to comply is a criminal offence.

Please let us know if you want to see an example of the new PSC Register.

Payment Practices:

The Government intends to impose on LLPs various requirements to publish information about their payment practices and policies.

The SBEEA 2015 envisages that large companies and LLPs (large private and quoted businesses with over 250 employees) may be required to publish details of their business-to-business payment practices. Companies will be required to report bi-annually and disclose details including:

+ payment terms;

+ processing and payment of invoices;

+ the average time taken to pay an invoice

+ percentage of invoices paid according to time period

+ disputes relating to the payment of invoices;

+ payments owed or paid by the company due to late payment of invoices; and

The Government intends to impose on LLPs various requirements to publish information about their payment practices and policies.
If you are beneath the 250 employee threshold, don’t forget to check this information as part of your due diligence when contracting with a larger business that is required to publish its payment practices, so you can negotiate safer payment terms.

Gender Pay Gap Reporting:

Draft regulations have been published which will require companies and LLPs with over 250 employees to report on the differences in pay between men and women in their organisations both in terms of average and median figures based on a calculated hourly pay rate. There is currently a consultation period on the proposals. As with Modern Slavery Act reporting, businesses under the 250 employee threshold may find that they will need to publish their data on their website for commercial reasons rather than because it is a mandatory requirement in order that they do not look out of line with larger businesses. The regulations are not likely to require employers to report on the gender pay gap for 18 months after implementation (expected on 1 October 2016).

Changes to LLP Filing Requirements:

The Companies and Limited Liability Partnerships (Filing Requirements) Regulations 2015, which came into force on 10 October 2015, implement a number of changes to apply the amendments to the CA 2006 by the SBEEA 2015. The SBEEA 2015 aims to simplify company and LLP filing requirements to reduce duplication and improve flexibility in dealing with the Registrar.

The amendments made by the Regulations include (but are not limited to):

- Removing the requirement for LLPs to provide the Registrar with a consent by an LLP member to act in that capacity and replacing it with a requirement to state simply that the LLP member has consented to act. From April 2016, any person appearing on the public register will be able to apply to have their name removed if they did not consent to act.

- Subject to certain exceptions, e.g. where the date of birth was contained in a document that was registered before the provision came into force, requiring the Registrar to omit the day of the date of birth of LLP members or directors from the publically available

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material on the register and preventing the Registrar from disclosing date of birth information except in specific circumstances.

From June 2016, companies and LLPs will no longer be required to submit annual returns. Instead, companies and LLPs will be required to confirm by way of a ‘confirmation statement’, or update where necessary, similar information at any time during a 12 month period. Although draft legislation requiring LLPs to deliver annual confirmation statements has yet to be published, the Government has confirmed that the provisions will also apply to LLPs.

LLPs have always been required to file certain information on a regular basis with Companies House. For LLPs not used to this disclosure regime, this may still come as a surprise. Examples of filing required from LLPs include annual accounts, annual return (though this will shortly change as referred to above) notification of changes to the membership and designated members, notification of change to registered office address, details of charges entered into etc.

Modern Slavery Act 2015 (‘MSA 2015’):

The Government intends to impose on LLPs various requirements to publish information about their payment practices and policies.

The MSA 2015, which came into force on 29 October 2015, requires all large organisations doing business in the UK and with a worldwide annual turnover of at least £36 million to publish an annual ‘slavery and human trafficking statement’. In other words, organisations must disclose information as to the steps they are taking to ensure that slavery and / or human trafficking are not taken place in their supply chains.

This will include disclosure of company policies, the findings of due diligence undertaken by the organisation across its business and supply chains, risk assessments and the steps taken to manage and minimise the risk of modern slavery occurring, and evidence of training provided. This disclosure must be approved by a companies’ board of directors – or, in the case of an LLP, its members – and posted on its website.

Organisations with a financial year end of 31 March 2016 onwards must publish a statement for their 2015-2016 financial year. Those with a year end
falling between 29 October 2015 and 30 March 2016 are not required to publish a statement for that financial year.

Given that those higher up the supply chain are likely to require similar compliance by all those suppliers beneath them, many LLPs and companies will find that there will be commercial advantages in preparing and publishing their own policies voluntarily as if the legislation applied to them even if their turnover is less than £36 million.

Statutory Books:

At least until June 2016, LLPs will have to maintain internal registers normally at its registered office in much the same way as companies. These have to be open to public inspection and inspection by any member of the LLP. This includes a “Register of Members” (name, address and whether also a designated member); a “register of charges” (where charges were created by the LLP before April 2013) or a copy of the charge where created after that date.

As of June 2016, companies and LLPs will, to a great extent, be able to elect to cease maintaining their own internal books and instead keep registers of PSCs, members, directors and secretaries at Companies House. Companies and LLPs will remain under an obligation to maintain and update the information as necessary.

However, given that only draft legislation requiring LLPs to keep their PSC registers at Companies House has been published, it is advisable to wait until further guidance is received in this respect. In any event, companies and LLPs will be required to retain their books covering the period before they elected to keep their records at Companies House.

Should any further assistance be required in relation to, for example, drafting policies or the formats for PSC registers or Modern Slavery Act Policies, or any of the above, please do not hesitate to get in touch.

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