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Applying Companies Act 2006 to LLPs

The application of the Companies Act 2006 to LLPs is being brought into force as follows:

- Penalties for late filing of accounts from 1 February 2009
- Reduction in filing deadlines to 9 months for accounting periods beginning on or after 6 April 2008
- Other accounting and auditing provisions for accounting periods beginning on or after 1 October 2008
- Remaining provisions on 1 October 2009

Draft Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 have been issued. The main areas of difference from the existing law are:

- **Breaches in 2 member rule.** Section 24 of the Companies Act 1985 was not included in the Companies Act 2006. The Regulations now contain this section which restores the status quo that, if an LLP only has a single member for more than 6 months, the single member becomes jointly and severally liable with the LLP for any debts contracted after 6 months of there only being a single member.

When the Regulations come into force the Secretary of State is given the power under Section 156 of the 2006 Act to require the LLP to add a member to comply with the minimum requirement and to take other steps to rectify the position. Currently the only option available to enforce the 2 member rule is for the LLP to be struck off the Register, which was not in the best interests of other parties dealing with the LLP.

In practice, if there is only a single member, the position can be remedied by the single member forming a limited company and appointing that company as a member of the LLP.

- **Signing Agreements and Deeds.** The Regulations will bring LLPs in line with limited companies and allow an LLP to execute a document by:
 - affixing its common seal (if it has one - there is no requirement for an LLP to have one); or
 - signing by 2 members; or
 - signing by 1 member in the presence of a witness.
- **Names of LLPs and Members details.** When the Regulations come into force there will be a new requirement for an LLP to keep a Register of Members (under SS162-165 of the 2006 Act). The Register must give a service address for a Member and specify who is a Designated Member. The Registrar of Companies must be notified where the Register is kept if not at the Registered Office. Members may view the Register free of charge and third parties may view it on payment of a fee. The same rules relating to confidentiality orders for directors of limited companies in specific circumstances will apply to members of an LLP.
- **Trading Disclosures.** The Regulations will require LLPs to comply with the same regulations as companies as regards display of name on documents and at specified locations.

- **Electronic Communication with Members.** The Regulations will introduce the rules relating to electronic communication with shareholders to an LLP's communication with its members. Therefore an LLP will be able to send information to members in electronic form rather than hard copy where those members agree.

Late Filing Penalties

From 1 February 2009 the penalty for late delivery of accounts to the Registrar of Companies is increased to the following (regardless of whether the accounts were prepared under the 1985 Act or 2006 Act), and apply to Limited Companies and LLPs.

Lateness of Delivery	Penalty	
	PLC	Private Co/LLP
Not more than 1 month	£ 750	£ 150
More than 1 month but not more than 3 months	£1,500	£ 375
More than 3 months but not more than 6 months	£3,000	£ 750
More than 6 months	£7,500	£1,500

For companies which file 2 consecutive sets of accounts late under the 2006 Act (i.e. for accounting periods beginning on or after 6 April 2008), the penalties are doubled.

Also for both Companies and LLPs the filing deadlines have been reduced by one month in respect of accounting periods beginning on or after 6 April 2008. For such accounting periods, the filing deadline is 6 months for PLCs and 9 months for Private Companies and LLPs. The filing date is measured to the end of the month in which they are due. Thus a private company with a year end of 30 June 2009 will have until 31 March 2010 to file them.

Appointment of an Independent Valuer

A recent case, Cream Holdings Ltd & Ors v Stuart Davenport, highlights the need for the appointment of an independent valuer to be strictly in accordance with the Articles of Association if it is to be binding on all parties.

In this Case, when a shareholder left the company, the Articles specified that where a fair price for the shares could not be agreed by the parties, a third party accountant was to be appointed to value the shares. The third party accountant was to be chosen by the departing shareholder and the Board. The departing shareholder and the Board identified a suitable accountant and the Company signed the accountant's engagement letter but the departing shareholder did not.

The Court held that because the departing shareholder had not signed the engagement letter the valuation was not binding on them.

This case illustrates the strict interpretation Courts are placing on Articles and the need for us to ensure that we are validly appointed.

Execution of Deeds

In a recent case (Mercury Tax Group) it was held that a deed signed by an individual was not effectively executed because the signed signature pages had been attached originally to an earlier incomplete draft of the deed and then had been “recycled” to the amended version.

This case could also impact on signing practices for ordinary contracts and brings into question the common practice of attaching a scanned signature page to a deed or contract.

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