



## Farm Partnerships - Practice Notes

A series of eight practice notes for Practical Law written by

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## Practice Note 8. - Limited Partnerships and LLPs

The series comprises:

1. Basic Principles
2. Who owns the business and assets?
3. Dissolution and winding up - retirement and death
4. How land can be owned and occupied in a partnership situation
5. Running the Partnership
6. Borrowings in Farm Partnerships
7. Tax
8. Limited Partnerships and LLPs

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## Farm partnerships: limited partnerships and LLPs

- **Resource type:** Practice note
- **Status:** Maintained
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*Practice note, Farm partnerships: limited partnerships and LLPs* is part of a collection of eight practice notes on farm partnerships.

This note looks at limited partnerships and limited liability partnerships (LLPs), the differences between them, and the relevant tax treatments.

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### Scope of this note

This note is part of a collection of eight practice notes on farm partnerships, and looks at limited partnerships and limited liability partnerships (LLPs), the differences between them, and the relevant tax treatments.

For further information on farm partnerships, see Practice notes:

- *Farm partnerships: basic principles* ( [www.practicallaw.com/5-614-4486](http://www.practicallaw.com/5-614-4486) ) .
- *Farm partnerships: who owns the business and assets?* ( [www.practicallaw.com/8-614-4507](http://www.practicallaw.com/8-614-4507) ) .
- *Farm partnerships: dissolution and winding up: retirement and death* ( [www.practicallaw.com/0-614-4525](http://www.practicallaw.com/0-614-4525) ) .
- *Farm partnerships: how land can be owned and occupied in a partnership*

situation ( [www.practicallaw.com/8-614-4526](http://www.practicallaw.com/8-614-4526) ) .

- *Farm partnerships: running the partnership* ( [www.practicallaw.com/6-614-4527](http://www.practicallaw.com/6-614-4527) ) .
- *Farm partnerships: borrowings in farm partnerships* ( [www.practicallaw.com/8-614-4531](http://www.practicallaw.com/8-614-4531) ) .
- *Farm partnerships: tax* ( [www.practicallaw.com/6-614-4532](http://www.practicallaw.com/6-614-4532) ) .

## Limited partnerships: under the Limited Partnership Act 1907

### General and limited partners

A limited partnership is very similar to a traditional partnership. The terms of the *Partnership Act 1890* (PA 1890) apply.

However, it is possible for one or more partners (limited partners) to join into the partnership on terms where their liability is limited to the capital they have introduced. Limited partners may not join in the management of the partnership; if they do their limitation of liability is lost.

Under a limited partnership, there have to be one or more general partners who have unlimited liability and who are responsible for the management of the business.

Investment funds are often structured in a manner to have a limited company as general partner, and individual investors as limited partners. This now has accounting implications (see *Accounts*).

### Formalities

A limited partnership is in effect a traditional partnership that is registered as such at Companies House under the terms of the *Limited Partnership Act 1907*. The information that has to be filed at Companies House is limited to the details of the partnership and the names and addresses of the partners.

It must have "LP" after its name, in the same way as a company name usually has to end with "Limited".

### Accounts

A limited partnership prepares its accounts in the same way as a traditional partnership, and is generally not required to file its accounts at Companies House. It therefore has more confidentiality than an LLP, which is required to file accounts.

There is an exception to this where all the general partners are limited companies. The *Partnership (Accounts) Regulations 2008* (SI 2008/569) were amended to require such limited partnerships to file accounts for periods beginning on or after 1 October 2013. This does not seem to apply to limited partners where one of the general partners is an LLP.

### Uses

It is relatively easy to convert the existing partnership into a limited partnership. It requires some amendments to the partnership agreement and registration at Companies House.

Limited partnerships can be useful in the following ways (by way of example):

- **Trustees and executors.** It is a convenient way for the trustees of a settlement or executors of a deceased partner's estate to be partners without exposure to unlimited liability or involvement in management. To act as limited partners they must have the relevant powers under the settlement deed or will.
- **Sleeping partners.** Family members holding interests in land can allow them to be used by the partnership by joining as sleeping partners. An appropriate share of profits can be allocated. Provided this is done correctly, the capital tax advantages of being in partnership (especially agricultural property relief (APR) and business property relief (BPR)) should be available to the limited partner.

## Restrictions on tax relief

There are some specific limitations that apply to limited partners, including restrictions on interest relief on borrowings by limited partners for capital or loans to the partnership, and restrictions on loss relief for income tax and capital gains tax (CGT) purposes.

## Liability for annual tax on enveloped dwellings (ATED) and related taxes

Limited partners have potential liability for annual tax on enveloped dwellings and related taxes. For more information on this, see *Practice note, Farm partnerships: tax: Liability* ( [www.practicallaw.com/6-614-4532](http://www.practicallaw.com/6-614-4532) ).

## Limited liability partnerships (LLPs)

Limited liability partnerships (LLPs) are a form of legal entity that was created by the Limited Liability Partnerships Act 2000 (see *Practice note, Limited liability partnerships: materials* ( [www.practicallaw.com/5-107-3903](http://www.practicallaw.com/5-107-3903) ) ).

They are essentially a hybrid between a company and a partnership. Like a company, an LLP is a corporate entity with its own legal personality. It must be registered with the Registrar of Companies, and the accounts must be prepared along the same lines as for a company and must be filed annually at Companies House.

LLPs were introduced primarily as a vehicle to allow professional partnerships to operate with a degree of limited liability.

The precedents that are generally available for LLPs are geared towards professional and trading partnerships and not at all towards farming partnerships, which hold substantial landed assets.

## Differences between LLPs and traditional partnerships

The Partnership Act 1890 does not apply to LLPs. This means that the whole body of partnership law, built up over more than 100 years, does not apply at all.

The rules relating to LLPs are found in the *Limited Liability Partnerships Act 2000* (LLPA 2000), and in the *Limited Liability Partnerships Regulations 2001* (SI 2001/1090) (LLP Regulations).

With a traditional partnership, the PA 1890 and the body of law that has built up provides a considerable backdrop to deal with the arrangements between the parties if the partnership agreement does not cover the relevant ground. The LLPA 2000 and LLP Regulations do not provide this backdrop. It is therefore necessary to ensure that the LLP agreement between the members covers the ground properly.

The principal advantage of an LLP is that each member can be involved in the business, but at the same time

his liability can be limited.

Under a traditional partnership, each partner is liable for all the debts of the partnership. Broadly speaking, a member of an LLP is liable only to the extent of his capital and undrawn profits held in the LLP. There are provisions allowing for a liquidator to claw back withdrawals made by members within the two years before a liquidation if they were aware of the likely insolvency.

In terms of limiting liability, therefore, it is sensible to restrict the assets held within the LLP. There may be important tax reasons to include landed assets on the balance sheet and in this respect a balance may need to be struck.

A further advantage is that an LLP can give a fixed and floating charge over its assets, in the same way as a company, and so can offer better security to lenders.

### **Member's share and interest in an LLP**

The LLPA 2000 refers to a "share" and "interest" in the LLP. However, these terms are not defined.

If a member leaves an LLP, there should be no difficulty in establishing his entitlement to a share of profits up to the date of leaving, and to the repayment of loans made by him to the LLP. Difficult questions arise as to an outgoing member's entitlement to repayment of capital and to a share of the surplus value of assets, unless these are spelled out in the LLP agreement.

It is therefore particularly important to ensure that the LLP agreement deals fully with what happens on a death or retirement.

It may be sensible to provide an outgoing partner (or his personal representatives) with the ability to insist that the LLP should be wound up if he is not paid out his share.

An outgoing member could apply for a winding up on just and equitable grounds under section 122(1)(g) of the Insolvency Act 1986. However, he would have some difficulty if he has already ceased to be a member, as he would then have to establish that he has a sufficient interest in the winding up.

### **Entitlement to any revaluation surplus**

The rules on a winding up of an LLP are not as clear as for a partnership under *section 44* of the PA 1890.

Section 107 of the LLPA 2000 applies on a voluntary winding up and section 154 on a compulsory winding up. In each case, any surplus is to be distributed in accordance with the member's rights and interests in the LLP.

In the absence of anything else, "all the members of a limited liability partnership are entitled to share equally in the capital and profits of the limited liability partnership" (*regulation 7(1), LLP Regulations*).

This applies subject to the terms of any LLP agreement, and underlines the need to ensure that the LLP agreement covers the distribution of the surplus on a winding up.

### **Tax treatment: differences between LLPs and traditional partnerships**

In most respects, the tax treatment of LLPs is the same as for traditional partnerships. There are a few important differences, as set out in the following sections.

#### **Liquidation and winding up**

The income tax and CGT transparency of an LLP only applies while it is carrying on activities with a view to profit. If this ceases, there are two significant implications:

- For income purposes, the loss of tax transparency will mean that the LLP is taxed as a company with corporation tax being levied at the corporate level.
- For CGT purposes, each member will be treated as having disposed of his interests in the LLP, which may well trigger a CGT charge.

HMRC has indicated that where members of an LLP wind up its affairs in an orderly way, without the formal appointment of a liquidator and in the course of a cessation of commercial activity, then the transparency for CGT will be preserved provided the winding up is not wholly or partly for the avoidance of tax, and that following the cessation of the LLP's business the winding up period is not unduly protracted.

Once a liquidator has been appointed, however, transparency will be lost. Any previously rolled over or held over gains will crystallise.

## VAT

HMRC has stated that they will view an LLP as a body corporate for VAT purposes. This is a potential advantage over a traditional partnership, because it can be a member of a group registration for VAT purposes.

## Income tax and national insurance treatment of LLP members

Before 6 April 2014, all members of an LLP were regarded as self-employed for income tax and national insurance (NI) purposes.

New rules were introduced from 6 April 2014, which treat certain salaried or fixed-share partners as employees for income tax and NI purposes. Broadly, this applies where:

- The member's remuneration is insufficiently linked to the profits of the business.
- The member has no significant influence over the LLP's affairs.
- The member has made an insufficient contribution to capital.

(For more information, see *Practice note, Limited liability partnerships: salaried members* ( [www.practicallaw.com/7-568-4328](http://www.practicallaw.com/7-568-4328) ).)

## Resource information

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This resource is maintained, meaning that we monitor developments on a regular basis and update it as soon as possible.

## Resource history

Changes made to this resource

We will record here any changes to this resource as a result of developments in the law or practice.

## Related content

### Topics

Farm partnerships and farming agreements (<http://uk.practicallaw.com/topic9-607-6428>)

**Practice notes**

Farm partnerships: basic principles (<http://uk.practicallaw.com/topic5-614-4486>)

Farm partnerships: borrowings in farm partnerships (<http://uk.practicallaw.com/topic8-614-4531>)

Farm partnerships: dissolution and winding up: retirement and death (<http://uk.practicallaw.com/topic0-614-4525>)

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