LLPs and Personal Duties and Liabilities of Members

1. Introduction

1.1 The purpose of this document is to highlight, in outline only, the main areas of personal liability for individuals who are members of a limited liability partnership (an “LLP”) under English law.

1.2 Like a limited company, an LLP has a separate legal personality and so the general starting point is that members of an LLP are unlikely to be liable for debts and liabilities of the LLP itself.

1.3 However, members of an LLP can still be subject to personal liability for actions carried out in their capacity as members of an LLP.

2. Liability of Members of the LLP to the LLP

2.1 Fiduciary Duties

2.1.1 There are no general fiduciary duties owed by members to the LLP. Duties may arise for an individual member, but generally only in the context of the specific roles and responsibilities he has adopted in respect of the LLP.

2.1.2 Fiduciary duties are likely to exist where, for example, a member has direct control over the affairs or property of the LLP. In such a case, that member may be bound by similar duties to those imposed upon company directors:

(a) To act in good faith, honestly and in the interests of the LLP

(b) To account to the LLP for all sums due to it

(c) Not to make a secret profit

(d) Not to act in conflict with the interests of the LLP

(e) To disclose all relevant information to the LLP in relation to its accounts, business etc.

2.1.3 It is likely however that a more passive member who has no role in the management of the LLP’s affairs (and who therefore is in a similar position to a shareholder in a company) will owe little or nothing in the way of
fiduciary duties to the LLP, at least in the absence of agreeing to specific obligations in a members’ agreement.

2.2 Duty of care

2.2.1 Members may owe a duty of care to their LLP under the law of tort.

2.2.2 The exact scope of this duty is unclear, although it is likely to be the same as that owed by directors of limited companies to their company under English law, namely to act with the reasonable skill, care and diligence of a person having both (a) the general knowledge and skill to be expected of a person in that position, and (b) the general knowledge and skill that that person has.

2.3 Consequences of Breach

Where these duties apply, if members act in breach of these duties they may be liable to the LLP for damages.

3. Liability of Members of the LLP to other Members

3.1 Given that fiduciary obligations generally only arise where a person assumes responsibility for the management of another’s property or affairs, there are limited circumstances in which a member of an LLP will be found to owe such duties to other members.

3.2 It now seems fairly well established in case law that there is no statutory basis for a general fiduciary obligation of good faith arising between the members in relation to the conduct of the affairs of an LLP.

3.3 The legislation that brought LLPs into being was drafted on the basis that any duties arising between members would need to be set out in an agreement between the members.

4. Liability of Members of the LLP to third parties

4.1 It is theoretically possible that LLP members could be personally liable in negligence to third parties (in particular, clients) for acts and omissions effected in the course of an LLP’s business. There is some debate as to how likely this is in practice as, given the relatively novel nature of LLPs as a legal form, the exact legal position in this area is unclear.

4.2 It may be that the position is similar to directors of a company. Leaving aside questions of fraudulent conduct, a director of a limited company will be personally liable in negligence where that director has assumed ‘personal responsibility’ for the matter in question – i.e. to the exclusion of the limited company, and the third party has relied on that assumption, and that reliance is reasonable. In the context of an LLP that would set a high, but not unattainable, bar for personal liability.

4.3 However, others have argued that the position is different, particularly for professionals. In relation to solicitors’ practices, the Law Society have expressed
the view that the solicitor-client relationship is sufficiently close and personal that a duty of care may in most cases be owed by a solicitor personally to a client. Members and LLPs should consider providing in the LLP agreement for an indemnity to its members in relation to any personal liability for negligence claims.

5. Statutory Obligations

5.1 There are a range of statutory obligations on the members themselves which relate to administrative matters and in particular the filing of accounts. In addition any member ‘in default’ may be liable for failures of the LLP to comply with statutory obligations such as:

5.1.1 complying with regulations relating to the filing and keeping of accounts;
5.1.2 complying with Companies House filing requirements; and
5.1.3 ensuring that the LLP’s name is in a conspicuous position at all offices of the LLP.

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