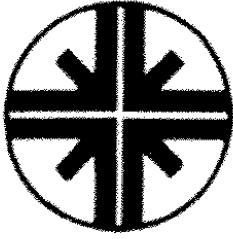


# CLRG Consultation on Limited Liability Partnerships

**Representation 02/2009**

February 2009



## **The Consultative Committee of Accountancy Bodies-Ireland**

The Institute of Chartered Accountants in Ireland  
The Association of Chartered Certified Accountants  
The Chartered Institute of Management Accountants  
The Institute of Certified Public Accountants in Ireland

Burlington House,  
Burlington Road,  
Dublin 4.

Mr John P Kelly  
Secretary,  
Company Law Review Group  
Department of Enterprise, Trade and Employment,  
Hatch Street  
Dublin 2.

January 2009

Dear Mr Kelly

### **Introductory comments**

The Consultative Committee of Accountancy Bodies-Ireland<sup>1</sup> ('CCAB-I') is pleased to respond to the Company Law Review Group ('CLRG') consultation on Limited Liability Partnerships ('LLPs').

The CLRG is aware that a key concern of the auditing profession in Ireland for many years has been the need for radical reform of the law pertaining to 'auditor liability'. The ongoing absence of reform means that there remains a very real threat to the continued long term viability of audit firms

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<sup>1</sup> CCAB-I is the represents the largest Prescribed Accountancy Bodies in Ireland and comprises;  
The Association of Chartered Certified Accountants  
The Chartered Institute of Management Accountants  
The Institute of Certified Public Accountants in Ireland  
The Institute of Chartered Accountants in Ireland

in Ireland. While is particularly acute for auditors of listed entities, the issue is relevant for all statutory auditors.

Auditors in Ireland are the only professionals exposed to potential catastrophic loss, and whose personal assets, as well as those of their businesses are put at risk by every audit engagement.

CCAB-I is pleased, therefore, at the recent recommendation in the recently published 2007 Report of the CLRG which contains a specific recommendation for the reform of the existing regime pertaining to auditor liability, namely by a statutory cap. CCAB-I would urge the CLRG and the Department of Enterprise, Trade and Employment to progress this matter at the earliest opportunity. Failure to do so means that audit firms continue to be faced with the threat of ‘catastrophic loss’ with potential serious adverse consequences for Ireland’s economy.

### **Limited Liability Partnerships**

The LLP structure, while providing some degree of protection for individual partners unconnected with loss claims relating to the audit of an individual client, does not address the issue of catastrophic loss.

At present, business entities in the Republic of Ireland are constituted as companies, partnerships, or sole traders. Under these current alternatives, the only option available to individuals wishing to take an active part in the business they own, while at the same time limiting their personal liability for the debts of the business is to establish the business as a company. They must constitute themselves as directors and shareholders with a share capital and shareholders and must observe complex and often onerous and disproportionate company law requirements.

Members of ordinary partnerships are personally liable to an unlimited amount for any debts of their firm and can be sued individually or collectively for any damages from negligence or breach of contract. So, if in a partnership, one partner causes damage by giving advice negligently all other partners are obliged to contribute to the damages up to the extent of their personal assets. There is obvious concern, therefore, that in today’s business environment of large partnerships, where it is not possible for individuals to know in detail the standard of work of their fellow partners, the personal assets of an individual can be put at risk by the action of others in their firm. LLPs can still be sued, but in the same way as a company the members’ liability is limited to the amount of money they have invested. The rationale for this new vehicle is to provide individuals with the security of carrying on business in common with limited liability, while at the same time providing safeguards for those with whom they deal. It will therefore assist those who wish to organise themselves as partnerships but fear putting their personal assets at risk. In many respects such third party safeguards resemble those which apply to companies but without being bound by aspects of company law that relate not to limited liability but to separation of ownership and management.

CCAB-I believes that it is now appropriate for the Government to bring forward proposals to introduce the LLP vehicle into the Irish law. The primary objective of this proposal is to underpin

the future of a successful professional services sector in the Republic of Ireland. This will increase the variety of business entity available to firms.

Such a measure would place auditors on a similar footing to their competitors in many other EU and common law jurisdictions. Partnerships other than accountants could also avail of the structure. The effect of the introduction of such partnerships in Ireland would be to protect the personal private assets of auditors in the event of claims which were not their personal responsibility. The auditor would still face a very significant exposure in the event of any default by the firm or its employees (up to the full extent of the assets of the firm, as opposed to the personal assets of the partners).

It is important to note that Irish auditors will be conducting statutory audits in jurisdictions other than Ireland. In some jurisdictions Irish auditors will not be entitled to exclude their liability. However, auditors in those jurisdictions can generally reduce their exposure by forming LLPs. The introduction of LLPs in Ireland would ensure that Irish auditors can do likewise, otherwise Irish auditors would suffer a competitive disadvantage, whether the relevant audit services were provided in Ireland or elsewhere.

**Concluding remarks**

Our response to the specific questions posed in the Consultation Paper is contained in Appendix 1. Should you have any queries in respect of the content of this letter or require further information, please contact in the first place, my colleague, Aidan Lambe at 01 [6377307](tel:6377307)/[aidan.lambe@icai.ie](mailto:aidan.lambe@icai.ie).

Kind regards

Yours sincerely

Pat Costello  
Secretary,  
CCAB-I

### Consultation Questions

Our answers to the specific questions raised are in the context of the accounting and auditing professions

#### **1. Does the availability of insurance not meet concerns about the unlimited personal liability of partners in a general partnership?**

Evidence confirms that, particularly at the higher end of the market, sufficient levels of professional indemnity insurance ('PII') are increasingly difficult, if not impossible, to obtain. Indeed, a number of insurance providers have exited the PII market in recent years.

The larger international audit firms operate 'captive insurance' vehicles which is in effect, a form of self insurance. However, the level of cover is not limitless.

#### **2. If policies of insurance are inadequate to meet concerns about unlimited personal liability, what are the specific reasons for this? Is insurance prohibitively expensive?**

The primary reason is an 'unwillingness' on the part of many insurers to become involved in this market at all. While cost is obviously a factor, the issue is primarily one of capacity and lack of choice. In the absence of reform of the liability regime under which auditors operate in Ireland, this is unlikely to change.

#### **3. Is insurance more of an issue for PSF partnerships than for non-PSF partnerships?**

Although we can only answer from the CCAB-I perspective, we believe the answer to this question is most likely 'yes'.

#### **4. If given a choice, would partners in a professional service firm ("PSF") partnership choose to form a company as a vehicle for carrying on their profession instead of practising through a partnership?**

It is more appropriate for a question of this nature to be answered by PSF firms themselves, rather than representative professional bodies. There are many factors, however, that will influence the structure through which a PSF will operate. For example;

- Tax structure;
- Firm ethos;
- Business activities and objectives.

**5. Is there a substantial risk that partners in a PSF partnership could lose their personal assets as a result of a claim not covered (or insufficiently covered) by insurance?**

For the reasons set out above, and also articulated in the 2007 Report of the CLRG, as regards the auditing profession, the answer to this question is unquestionably 'yes'.

**6. Should LLP legislation in Ireland provide for (a) partial shield protection (i.e. protection against the negligence of a partner), (b) full shield protection (i.e. protection against the negligence of a partner and against the contractual debts of the partnership) or (c) separate legal personality of the LLP?**

It would appear difficult to legislate for option (b) without also having option (c). We would not support option (a).

**7. Should the LLP privilege be available to all forms of business or should it be limited to certain professions?**

We see no reason why the LLP structure should not be available to all forms of business, as is the case, for example, in the United Kingdom.

**8. Should the safeguards against misuse of the LLP be contained in primary legislation or in the rules of the bodies charged with oversight of the relevant professions?**

Such safeguards should be contained in primary legislation. If necessary, this could be supplemented by granting ministerial powers to develop secondary powers by way of regulation. In view of our answer to question 7, there may well be businesses availing of LLP status that are not subject to any form of professional registration.

**9. Should LLPs be required to undergo registration on a public register? With whom should the LLP be required to register?**

Such public registration is appropriate with the Companies Registration Office being the most obvious registrar.

**10. Should LLPs be required to make financial disclosure similar to limited companies?**

It would be appropriate for some form of financial disclosure to be one condition of LLP status. For example, in the UK, the accounting requirements for LLPs are contained in a specific 'Statement of Recommended Practice' (SORP), franked by the Accounting Standards Board. Further discussion and consultation of the specific disclosures for LLPs in Ireland is needed.

**11. Can the problem of unlimited personal liability in partnerships be addressed by other means, without resort to a new LLP structure? Are contractual limits on liability or statutory caps on liability a viable alternative to the introduction of LLPs?**

The prime concern of the auditing profession in the current principle of joint and several liability under which auditors in Ireland conduct their work. We have set out above our concerns in this regard and these are also contained in the 2007 Report of the CLRG. In all respects, implementation of the Recommendation for reform of auditor liability by way of a statutory cap, differentiating between listed or larger and small companies would go some way towards addressing the key concern of statutory auditors.

**12. Is the introduction of LLPs of interest to the financial services industry in Ireland?**

Best answered by that industry.

**13. Does Ireland need a new approach to address the issue of unlimited liability in partnerships?**

See above.

**14. Is the general limit restricting the size of partnerships to twenty members a constraint on using partnerships as a business model and should it be removed? Or, is it only a constraint in relation to certain sectoral activities and should it thus be removed only in certain specific instances?**

CCAB-I would very much welcome the removal of the 20 partner limit. This issue is particularly relevant to larger audit firms who have had to operate under complex and administratively expensive partnership structures in order to ensure compliance with this requirement, often operating parallel partnerships within the same organization.

Governance, ownership, and control regulatory requirements as regards audit firms have long since surpassed the 1982 legislation, most recently through the Companies Act, 1990, soon to be updated by the transposition of the EU Statutory Audit Directive (8<sup>th</sup> Directive).

In recent years, a similar limitation on the number of partners has been removed in the United Kingdom.

**15. Are there any other issues regarding LLPs which ought to be brought to the attention of the Company Law Review Group?**

There are a number of different legislative models under LLPs have been established around the world. Further examination of the merits of each of these is needed. In addition, careful consideration of taxation issues will be required. Ideally, the choice between an ordinary partnership and LLP should be tax neutral.