

# Co-operative Assistance Network Limited

## **Notes on the Liquidation of an LLP December 2013**

### **Statement**

I need to formally inform you that despite a great deal of hard work on the part of both of us, [name] and I, we have been unable to dissolve [name] LLP as we intended. The total intransigence of HMRC had led to us appointing a liquidator.

I must inform you that as of [date] 2013 the LLP was officially liquidated.

### **Question**

Did you find the liquidator was familiar with the structure and do you feel that the process worked in exactly the same way as it would do for a limited company or IPS? Or do you feel that as partners in a LLP you were treated differently or asked to account for your drawings differently to the way in which you would have been treated or asked to account for your salaries as – say – directors of a company?

### **Reply**

That's an interesting question. I think we were both expecting a different response from the one we got!

Firstly, the LLP structure still treats your drawings as your capital account because you are not an employee. Therefore even if you are taking drawings appropriately (i.e. in-line with what the company can afford) you are still increasing the capital account.

I don't think we totally understood the implications of the first draft of our accounts until we got to this line within them.

When you are trading the LLP structure works really well – but when the costs have to be laid at someone's door, there is only one place for them to go and that's against the members' accounts.

Having said this, both our accountant and the liquidator were really helpful (costly, but helpful) and both have given us advice and support towards a reasonably equitable outcome.

**I have to say I would now think very seriously before recommending an LLP to clients – at least without a health warning!**

### **Question**

Also, for clarity, are you saying that the LLP has limited liability but that limited liability is limited to what the members have drawn? And if so, drawn over what period?

### **Reply**

OK - I might get out of my depth here - the normal limited liability extends to the level of ownership of the company through shares. This doesn't happen in an LLP. There are no shares, the partners are still treated jointly and severally but their liability rests on their capital accounts.

If you are taking salary from the company - you are still taking income in advance of profit - therefore when you run out of profit, i.e. creditors take action or debts exceed current assets, the value of the money you are drawing is still in your capital account, i.e. you owe it to the company.

The period covered depends on how you have treated profit in the past, i.e. retained or distributed, and whether there are short or long term creditors. In our case HMRC was a creditor over one year due to a dispute over VAT on a very large contract that we had fronted on behalf of a group of companies.

If there was no other agency involved we would effectively have just owed one another and we could have agreed to part on any agreement we wanted. With another creditor in the room, their debt comes first and the company must come up with enough money to cover it. If that cannot be found out of the assets of the company then the partners need to return the capital that is sitting in their accounts, i.e. what they took in advance of the profit.

This is how I understood the situation.

At the moment I am very clear that the 'limited' in the LLP is in itself a limited concept. Everything has to be preceded with - "it depends....."

### **Comment**

So it is an LLLP!

I am still confused about when you count profit as retained or distributed so when it is in your capital account or not. But reading your "I might get out of my depth here" I am guessing that you may be unclear here too.

### **Comment 2**

That is how I had understood it: under enough pressure from powerful enough creditors the liability of each of the partners could be "limited" to the amount that they have ever received as partners and therefore if they have spent that money on staying alive their liability might be limited to more than they actually own. Whereas, most people establishing an LLP have this vague idea that their liability is simply and easily and cheaply limited to bugger all while they get away with paying very little tax on their drawings after they have allocated most of their cost of living against self-employment costs and how clever are we? The truth is that unless you can demonstrate that you have covered every liability that has arisen or contingent liability that might arise from the activities of the partnership you are never in a position to make any drawings as a member, and if you do you might still be proved to be wrong and have to pay it back. This would certainly be the HMRC position as you have found.

### **Comment 3**

There does seem to be a time factor in there. Like if your creditors are built up

prior to a certain date, then if all the creditors were covered at the certain date (bearing in mind future events once those events have become history) then that LLP capital does in fact become drawings. I have no proof of this but it is what I read into Sally's comments.

#### **Comment 4**

I'm sure this has been a pretty torrid time for you and your employees. Being an LLP ourselves (there but for the grace of god) I think part of the issue is the perception of what drawing are for partners in an LLP - we never called them wages - and they remain "drawings in anticipation profit" until the profit is declared - and you cannot distribute profits you have not made. This makes sense to me in the trading year... however... did they claw back profits/distributions from previous years? If the answer is yes that is really nasty... and would put me off LLPs totally. Pleased you are still there...

#### **Response**

The debt to HMRC had carried over from the previous year and at that time we had believed it would be sorted out in our favour. As it transpired HMRC were given new instructions about recovering monies due and interest had been added. By the time we were informed they were going to take action it wiped out all profit, therefore we were effectively in debt to the company for the total of our drawings for that full year.

The issue is really what the other creditors want to do - if there are any. If, as in our situation, there was a debt being carried over from year to year any other creditors can decide to take action to recover on the basis that technically we had not addressed the full debt in the year in which it was due. I think this means that we had continued to take drawings in advance of profit that we knew was owed to someone else - I'm a bit confused here, so don't rely on my interpretation.

I do know that when they start to assess the equity in your house - it gets very scary indeed!

I am sharing this with you all as colleagues - I appreciate that we all need to know this stuff but we still have our lives to live - so if you can use the learning without too much of our personal situations being aired to the world, I think we would both be very grateful.