by Jonathan Garcia, ISOLAS

Gibraltar Government publishes LLP Bill

The Gibraltar Government has published the proposed legislative framework for the incorporation of limited liability partnerships.

The Limited Liability Partnerships Bill 2008 (the "Act") is little more than a framework piece of legislation, only containing details of incorporation, membership and taxation. The Act empowers the Minister for Finance to adopt regulations, likely to be known as the Limited Liability Partnerships Regulations 2008, to regulate the management and winding-up of limited liability partnerships (LLP(s)).

Confusingly, an LLP is not legally a partnership. It is, however — like a company — a corporate body with a continuing legal existence independent of its members, formed where two or more persons come together for the purposes of carrying on a lawful business with a view to profit. It will therefore not be appropriate as a vehicle for non-profit making activities. Generally, partnership law does not apply to LLPs. An LLP has the legal capacity to do anything that a natural person can do and exists wholly independently of its members and changes to its membership structure. It has an open ended and indefinite existence, and will continue until it is wound up.

Members of an LLP are free to agree between themselves the terms of the relationship between them. This makes the LLP a very flexible vehicle. The internal affairs of an LLP (the rights and duties between the LLP and its members) are ordinarily set out in an LLP agreement. Even though the Act envisages that an LLP agreement will be the norm, there is no requirement for this to be in place. The agreement remains confidential between the members and the LLP and no disclosure or registration requirements apply. In lieu of having an agreement, it is envisaged that a number of "default" provisions (dealing, for example, with management, profit sharing and contribution on winding-up) will apply through the publishing of regulations. The "default" provisions are likely to produce unsatisfactory results except in the most basic and straightforward arrangements.

LLPs have been primarily designed with professionals such as accountants, surveyors, lawyers and architects in mind, whose partners may potentially be at risk from the careless or accidental negligence of a colleague. Under the terms of the Act, members are given limited liability without having to issue share capital, whilst having no restriction on the number of members who may form part of an LLP. An LLP may also be appropriate for a partnership where some partners are not actively involved.

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The basic principle, and frequently the driving factor of a conversion to limited liability, is that the liability of a member is limited to the assets that he puts into the LLP, his capital contribution and undrawn profits in particular. However, it is worth remembering that, as a member of an LLP, an individual's liabilities are "limited" rather than becoming non-existent.

LLPs may also have a place in the financial services sector, particularly in the investment funds industry. However, it is uncertain at this stage whether the scope of the Financial Services legislation will be extended so that LLPs are capable of being established as, for example, an experienced investor fund. In the event that it could, an LLP could potentially provide a popular form of collective investment vehicle, primarily because it is regarded as fiscally tax transparent with no local tax exposure.

The Bill for the Act has yet to be debated and approved by Parliament. ■