



Our ref: RSM/CCAB/LLP SORP
Your ref:

Ms Sharon Grant
CCAB
Moorgate Place
London
EC2Y 2BJ
Via email :sharon.grant@ccab.org.uk

Third Floor, One London Square
Cross Lanes
Guildford
Surrey, GU1 1UN
United Kingdom
T +44 (0)844 2640300
rsmuk.com

15 October 2018

Dear Ms Grant

2018 Draft Statement of Recommended Practice - Accounting by LLPs

We welcome the opportunity to comment on the 2018 draft Statement of Recommended Practice (SORP) Accounting by LLPs.

Our responses to the questions raised in the consultation are set out in Appendix 1 to this letter. We are supportive of the changes the CCAB has made to update the SORP for the triennial review of FRS 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102).

If you wish to discuss anything further do not hesitate to contact Danielle Stewart OBE.

RSM UK Tax and Accounting Limited

RSM UK Tax and Accounting Limited

Danielle.StewartOBE@rsmuk.com

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

RSM Corporate Finance LLP, RSM Legal LLP, RSM Restructuring Advisory LLP, RSM Risk Assurance Services LLP, RSM Tax and Advisory Services LLP, RSM UK Audit LLP, RSM UK Consulting LLP and Baker Tilly Creditor Services LLP are limited liability partnerships registered in England and Wales, with registered numbers OC325347, OC402439, OC325349, OC389499, OC325348, OC325350, OC397475 and OC390886 respectively. RSM Employer Services Limited, RSM HR Limited, RSM UK Tax and Accounting Limited and RSM UK Management Limited are registered in England and Wales with numbers 6463594, 3539451, 6677561 and 3077999 respectively. RSM Northern Ireland (UK) Limited is registered in Northern Ireland at Number One Lanyon Quay, Belfast, BT1 3LG with number NI642821. All other limited companies and limited liability partnerships are registered at 6th Floor, 25 Farringdon Street, London, EC4A 4AB. The UK group of companies and LLPs trading as RSM is a member of the RSM network. RSM is the trading name used by the members of the RSM network. Each member of the RSM network is an independent accounting and consulting firm which practises in its own right. The RSM network is not itself a separate legal entity in any jurisdiction.

RSM Legal LLP is authorised and regulated by the Solicitors Regulation Authority, reference number 626317.

Baker Tilly Creditor Services LLP is authorised and regulated by the Financial Conduct Authority for credit-related regulated activities, financial services register number 619258.

APPENDIX 1

Question 1: Do you agree with the proposed amendments? If not, why not?

Yes, in general we are in agreement with the proposed amendments except as set out below.

We welcome the guidance in paragraph 57A on what “director” should be taken to mean in applying the exemption given in FRS 102 paragraph 11.13A to an LLP, but would recommend further clarification as to whether a “director” in this context is always presumed to be a member of the LLP. The exemption in FRS 102 is intended to give relief for small owner-managed businesses, taking into account the variety of ways in which such small family businesses are structured and operated. While we consider it is likely to be rare, it is possible to imagine scenarios, in the context of small family businesses, where some management functions of such a business operated through an LLP might be delegated to a family member who is not a member of the LLP. For example, suppose a family business run through a small company is 100 % owned by one family member, X, who has retired and is no longer a director, with a second family member, Y, as director. A loan from a third family member, Z, not involved in the business would, provided all are within a close family group, be in the scope of the amendment to FRS 102. Suppose the business is instead run through an LLP with a company and X as members of the LLP and Y managing the business as an employee, not a member of the LLP. Although all three are members of the same close family group, the loan from Z would not be in the scope of the amendment unless Y is deemed to be the equivalent of a director, even though not a member of the LLP.

We recommend paragraph 57A is amended to state “... a director is taken to mean a person, who may not be a member, who has an equivalent role within the LLP.”

We note that a new paragraph (paragraph 108A) has been added to provide guidance on the revised recognition rules for intangibles assets acquired in a business combination. This guidance states that two independent LLPs may come together without the transfer of purchase consideration. We consider this to be unlikely in practice as members of one or both LLPs are likely to be exchanging their interests in one LLP for membership rights in either the other LLP or a new LLP formed to affect the business combination. Where significant intangible assets are acquired as part of a business combination without the transfer of cash the substance is that members are contributing those assets to the acquirer and thus these form part of the purchase consideration. Therefore, it is only in the case of a genuine bargain purchase that we would expect negative goodwill to arise. As such we recommend new paragraph 108A is removed and new paragraph 108B is amended to make it clear that in the event of a bargain purchase where FRS 102 allows an accounting policy choice recognition of intangible assets will increase the amount of negative goodwill recognised.

Question 2: Are there any other areas of the SORP that you believe should be updated as a consequence of the 2017 Triennial review amendments?

We do not believe there are any other areas of the SORP that require updating as a result of the triennial review.

Question 3: Are you aware of any other developments which might suggest that further guidance is needed in the SORP?

We are not aware of any other developments that might suggest further guidance is needed in the SORP.

Question 4: Are you aware of any issues specific to LLPs that have arisen as a result of applying Section 1A Small Entities of FRS 102 and which might suggest that further guidance is needed in the SORP?

Statements of changes in equity for small LLPs

LLPs, other than small LLPs, are required to include a reconciliation of members' interests as a note to the financial statements in the format prescribed by paragraph 60 of the SORP. This must include loans and other debts due to members and members' other interests. This may be presented as a primary statement instead of a Statement of Changes in Equity. Where this reconciliation is not presented as a primary statement large and medium sized LLPs are required by paragraph 59 to present movements in members' other interests as a primary statement or to make a statement that the LLP has no equity.

Paragraph 27D encourages small LLPs to include a reconciliation of members' other interests as detailed in paragraph 59 of the SORP. This is consistent with paragraph 1A.9 of FRS 102, which encourages small entities to present a Statement of Changes in Equity. In our opinion the amount of disclosure encouraged for small LLPs should not be determined by the legal form of members' interests but by the information that is relevant to users of the accounts. Therefore, we consider paragraph 27D should be amended to encourage all small LLPs to present a reconciliation of members' interests (ie both debt and equity) as required by paragraph 60 as a primary statement or as a note to the accounts as this would be both consistent with FRS 102 in that it encourages disclosure in line with that encouraged for other small entities, and provide information useful to users of the accounts in making decisions.

Question 5: Do you have any other comments on the LLP SORP?

Automatic division of profits

We continue to see LLP agreements where there are apparent conflicts between various provisions in relation to division and distribution of profits. In particular, we are seeing agreements where profit is automatically divided and credited to members' current accounts but where the LLP, or a designated member, or some form of management or governing body of the LLP, has the discretion to restrict or defer the amounts members may draw against their allocated profits in certain circumstances. We have even seen agreements which specify that profits are credited to members' current accounts as they arise but still make it possible for cash distribution of such profits to be restricted at the discretion of a member or members.

These type of LLP agreements appear most commonly to arise in the financial services sector in order to prevent breaches of regulatory capital requirements. How such profits are reported in LLP financial statements, specifically whether these are presented as members' remuneration charged as an expense or as amounts available for distribution to members, would also impact on whether the relevant prudential requirements are met. We can provide more details if these would assist in clarifying the issue.

Therefore, we would welcome further guidance in the SORP where the LLP agreement allows for exercise of discretion over the payment of profits to members in certain circumstances. The definition of automatic division of profits in paragraph 10 refers to an LLP's unconditional obligation to divide profits based on the LLP agreement and a member's unconditional entitlement to those profits should they come into existence. It goes on to say a division of profits that requires a decision of the LLP does not constitute an automatic division. However, it doesn't deal with the situation described above where the decision could be made not to allow members to draw against profits allocated to them but where profits will still be distributed when no such decision is made.

Paragraph 24 says that where profits are automatically divided the LLP will not have the automatic right to avoid delivering cash or other assets. Does the ability for a decision to be made to restrict cash payments give an LLP the automatic right to avoid delivering cash when in the absence of such a decision, members will have the right to demand payment? Also does the ability of the LLP to withhold cash when a decision is made under a provision in the LLP agreement to do so negate that division of profits is discretionary notwithstanding any other clauses in the LLP agreement?

Paragraph 69 requires disclosures in relation to drawings and the policy when the cash needs of the LLP compete with the need to allow cash drawings by members, but this does not address the difficulties we are seeing, as outlined above, in relation to classification of profits when the LLP agreement anticipates there may be such competition.

Thus, we would welcome clarification on the following:

- whether members' unconditional right to profits must also include the right to have those profits distributed in cash or other assets in all circumstances, and

- whether an LLP has an automatic right to avoid delivering cash or other assets where a negative decision (profits are distributed unless decided otherwise) is required rather than a positive decision (profits are only distributed if a decision to do so is made).