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Comparison of New Business Entities between the United States and United Kingdom: Are U.S. LLC and U.K. LLP really useful alternatives?*

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Ⅰ. Introduction

In both Korea and Japan, as well as other developed countries, law provides for different types of business organisation. One of the most significant issues in deciding on the type of business form is to have not only the most advantageous tax treatment but also the limited liability for the business owners. In the U.S.A, the limited liability company (LLC) is a business form which provides for taxation pass-through treatment while shielding members from personal liability for business debt. The LLC is a creature of state law, but is governed by subchapter K of the Internal Revenue Regulations(1).

The emergence of a new legal form, i. e., the limited liability partnership (LLP), in the United Kingdom, in 2001, may be depicted by some as part of a general, evolutionary movement towards new limited liability vehicles, influ-

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(1) William H Copperthwaite Jr, *Limited liability companies: The choice for the future*, 103 Commercial Law Journal 222 (1998).

enced by such moves in the United States(2). Some are also suggesting that this new legal form, the first such innovation in the United Kingdom for over a century, will provide a more suitable vehicle for small, owner-managed firms than the ordinary limited company(3).

The purpose of this article is to analyse from the legal viewpoint whether the LLC or LLP can become a useful alternative to limited company for small businesses

Ⅱ. Forces Behind New Entities Adoptions

U.S. LLC

Initially the I.R.S proposed regulations that required any firm in which all members possessed limited liability to be taxed as a corporation. These regulations would have required LLCs to pay entity-level taxation. The I.R.S withdrew the proposed regulations, however, when faced with strong opposition from the business community. One author has suggested that tax regulations will continue to favor LLCs because no "powerful interest group" is injured by them(4).

Another impetus behind the adoption of LLC statute is competition among states for business and filing fees. In a classic "race to the bottom" scenario, the first LLC statute were adopted with the goal of attracting business, while subsequent state adoptions have been triggered by a fear of being left out.

Perhaps no group has lobbied more vigorously for passage of LLC legislation than professionals. Lawyers and accountants hope to organize as LLCs,

(2) *See, e.g.*, Judith Freedman, *Limited liability partnerships in the United Kingdom-do they have a role for small firms?*, 26 Journal of Corporation Law, p.897 (2001).

(3) *See, e.g.*, John Birds, *A new Form of Business Association for the Twenty-First Century*, 21 Company Lawyer, p.39 (2000); Graham Ward, Press Release, Institute of Chartered Accountants, New Accounting Rules for Limited Liability Partnerships ICAEW, (July 2001); Judith Freedman, Ibid.

(4) *See, e.g.*, Maizes, Rachel, *Limited liability companies: A critique*, 70 St. John's Law Review 587 (1996); Larry E. Ribstein, *The Deregulation of limited liability and the Death of Partnership*, 70 Wash. U. LQ 473 (1992).

or as limited liability partnerships, a related business form, in an attempt to limit their malpractice exposure. Professionals who organize as a general partnership are jointly and severally liable for malpractice committed by a member of the firm. By contrast, while the assets of the LLC are available to satisfy a judgment against a member of the firm, a professional is not personally liable for the malpractice of another member solely by reason of being a member of an LLC.

The limitation of personal liability for professionals has become more important than ever because they are increasingly the targets of lawsuits. For example, government regulators have sued accountants and lawyers for their roles in the savings and loan crisis and the Bank of Credit and Commerce (B.C.C.I) scandal, extracting multi-million dollar settlements. The size of professional malpractice awards generally has also been rising. Accounting firms have collapsed under the weight of these judgments, leaving partners to pay for the shortfall out of their own personal assets. Thus, for professional firms, which are generally not asset-rich, regulator suits raise the specter of personal bankruptcy for partners. Another separate, but important benefit for lawyers and accountants in the passage of LLC legislation, is the increase in the demand for their services, as businesses reorganize under the new form(5).

U.K. LLP

The U.K. LLP was proposed initially to meet the perceived needs of professional firms, primarily auditors, who were complaining of unrealistic expectations and "deep pockets" syndrome due to their inability to limit their liability(6). As the legislation was consulted upon and debated, it became clear that it was very difficult to sustain an argument that this new legal form should be limited to certain regulated groups of professionals. The definition of profession was unclear; there were complaints of nonlevel playing fields

(5) Maizes, Rachel, supra note 4, at 587-590.

(6) DEPARTMENT OF TRADE AND INDUSTRY, LIMITED LIABILITY PARTNERSHIP (1997) (Consultation paper)

between potential competitors for business, some of whom were classified as "profession" and some not. Eventually, it was decided to extend the legislation so that any two people could set up an LLP. Thus, there is no restriction of this legal form to professions in the United Kingdom. Although in its origins the U.K. LLP is similar to those of LLPs in the United States, the resulting legal creation is very different. In fact, the LLP is a misnomer for the U.K. legal form, which is closer to a company than to a partnership(7).

Ⅲ. History of Legislation

U.S. LLC

Development of non-corporate business forms helps private business by addressing problems that inhibit innovation within the corporate form. New business forms may help to break down barriers to corporate contracting by offering different sets of choices.

In the United States, the LLC provides for a business form which combines corporate-type limited liability and favorable tax treatment(8). In 1977, Wyoming enacted the first Limited Liability Company Statute. This Act was a result of the direct effort of Hamilton Brothers Oil Company, a company involved in international oil and gas exploration using Panamanian limited liability companies. Hamilton was about to embark in a joint venture for oil and gas exploration in the United Kingdom sector of the North Sea, and preferred to operate through United States entity. With the assistance of Peat, Marwick, Mitchell and Co. in Dallas Texas, Hamilton Brothers Oil Company drafted legislation which was presented to Wyoming Legislature, and adopted without amendment(9).

In 1988, the Internal Revenue Service (IRS) answered the question regarding the federal income tax treatment of the LLC and in Revenue Ruling 88-76 classified a Wyoming LLC as a partnership for federal tax purposes(10).

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(7) Judith Freedman, supra note 2, at 899.

(8) *See, e.g.*, Robert Keatinge & Larry E. Ribstein, et al., *The Limited Liability Company: A Study of the Emerging Entity Business Lawyer*, 7 Bus. LAW., p.75 (1992)

Since that time, enactment of LLC statute has swept through the states[11].

U.K. LLP

The professions, particularly the audit profession, in the United Kingdom have been campaigning for a change to the rules on their liability for some time. In particular, they have argued for a change to the law of joint and several liability, which they have claimed has made them vulnerable as the party with "deep pockets" to full liability for losses in cases where the responsibility should be shared with others. In 1996, the Law Commission rejected the suggestion that the law on joint and several liability should be changed[12]. LLPs were seen as a kind of consolation prize for the audit firms. The Big Six, as they then were, had seen that LLPs helped them in the United States. Therefore, they pressed for LLPs in the United Kingdom, notwithstanding that the U.K. law on liability was probably more favorable to the audit firms than that in the United States[13].

Two firms, Ernst & Young and Price Waterhouse, were at this time drafting a law for Jersey in the Channel Islands to introduce LLPs. They were threatening the U.K. government that they would go offshore if LLPs were not made available in the United Kingdom. Audit firms were, by this time, permitted to incorporate with limited liability in the United Kingdom[14],

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(9) Letter dated June 5, 1992 from A.J. Miller, Executive Vice President and Chief Financial Officer, Hamilton Brothers Oil Company, to Wyoming Supreme Court Chief Justice, Walter Urbigkit. This letter is quoted in its entirety in Bagley and Whynott, The Limited Liability Company: The Better Alternative, Fourth Edition, James Publishing Company, p.1,451. Adoption was in Chapter 157, Session Laws of Wyoming, 1977; Bagley, William D. *The limited liability company: A new entity for the United States*, 9 Commercial Law Bulletin, p.17 (Mar/Apr 1994)

(10) Joseph Vitek, *The Limited Liability Company*, 27 Creighton L. Rev. 191, 192 (1993)

(11) William H Copperthwaite, supra note 1, at 223

(12) COMMON LAW TEAM OF THE LAW COMMISSION, FEASIBILITY INVESTIGATION OF JOINT AND SEVERAL LIABILITY (1996); Judith Freedman, supra note 2, at 905

(13) This is discussed in more detail in Judith Freedman & Vanessa Finch, *Limited Liability Partnerships: Have Accountants Sewn up the "deep pockets" Debate?* , 1997 J. Bus. L., 387; Judith Freedman, supra note 2, at 905

(14) The previous prohibition on incorporation was lifted from auditors by the Company's Act, 1989, section 25.

so it is hard to avoid the conclusion that this pressure was motivated by tax considerations. Incorporation would have been costly in tax terms, for reasons referred to above, although the professional firms also argued that they did not wish to lose the partnership ethos. Whether the Jersey route would have worked for tax purposes is unclear. The Inland Revenue refused to give any assurances on this and the courts refused to give what amounted to an advance ruling on a hypothetical basis[15]. This was, however, in the run up to the 1997 General Election and both main political parties, seeking to demonstrate that they were business friendly and subjected to some extensive lobbying by professional bodies, promised that a U.K. LLP would be introduced.

As a result, an LLP Act was passed in July 2000 and came into force in April 2001. There was little opposition, although there was considerable discussion about the form of the legislation between the profession and government[16].

Ⅳ. Characteristics of New Entities

U.S. LLC

The LLC is a new organizational form which, if properly structured, combines the limited liability of a corporation[17] with the pass-through taxation of a partnership. Adding to its appeal, LLC is far more flexible than older limited liability organizational forms[18].

The LLC combines the corporate benefit of limited liability for all participants with complete flexibility in internal structure and management.

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⑮ R. v. Commissioners of Inland Revenue, *ex parte Bishopp*, [1999] STC 531; 72 TC 322; Judith Freedman, supra note 2, at 905

⑯ Judith Freedman, supra note 2, at 905, 906.

⑰ The language granting limited liability to LLC members is even broader than the language granting limited liability to corporate shareholders; *See, e.g.*, Maizes, Rachel, supra note 4 at 581.

⑱ Keatinge & Ribstein et. al., supra note 8 at 417 (“Because the LLC statutes provide only a minimal number of mandatory rules, LLC members have a great deal of freedom in organizing the LLC’s economic and management structure.”).

In terms of liability, LLC may be roughly analogized to a limited partnership composed only of limited partners. However, all of the members may freely participate in management of business without becoming liable for the business's obligations. This protection is provided simply by a provision in the LLC statute that states that members are not personally liable for the organization's debts.

LLC statutes permit the internal management structure to be modeled after either a corporation or a general partnership. LLC statutes generally provide that each LLC should elect to be either "member managed" or "manager managed." A member managed LLC is governed by a set of rules similar to a partnership while a manager managed LLC is governed by a set of rules more analogous to a corporation. However, the operating agreement may modify these rules as the members desire[19].

Unlike a limited partnership, the LLC is not required to have a general partner (i.e., someone with full personal liability)[20]. Unlike limited partners, investors in an LLC (called "members") can manage the business without jeopardizing their limited liability status[21].

The internal management structure of a traditional corporation is three-tired: shareholders, directors, and officers. Each tier has its own rights and duties established by statute (and by tradition), and the power to vary this structure may be limited.

The traditional corporation also has procedural requirements for meetings and for decision making. Many corporation statutes have fixed rules for such matters as notice of meetings of shareholders and directors, establishment of record dates, quorums, decisions based on formal votes on motions, maintenance of minutes of meetings in minute books, stock register and stock transfer books, and the like, which are appropriate for publicly held corpora-

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[19] Robert W. Hamilton, The Law of Corporations, Fifth Edition, West Group, at 24, 25. (2000).

[20] The Revised Uniform Limited Partnership Act defines a limited partnership as having "one or more general partners." R.U.L.P.A. §101 (7).

[21] Maizes, Rachel, supra note 4 at 583.

tions but not for small-sized, closely held businesses. In the small-sized, closely held corporation, it is very likely that these formal requirements will be ignored and decisions will be made quite informally. Failure to follow corporate formalities in many states is explicitly a factor considered by courts when deciding whether to pierce the corporate veil and impose on shareholders personal responsibility for corporate obligations.

The LLC has none of these formal requirements. The internal structure of an LLC may be quite informal, with members acting as though they were partners rather than as shareholders or directors or officers. Decisions in an LLC may be made quite informally, and the question whether a specific prior action was properly taken is simply a matter of evidence, and not of reliance on formal corporate records. The LLC structure is thus not only simpler but more natural for most business persons(22).

The LLC is not subject to the many constraints under which the S-corporation operates. S-corporations are limited to a single class of stock(23) and a maximum of thirty-five shareholders, all of whom must be individuals and United States citizens(24). By contrast, the ownership and profit-sharing arrangements that can be adopted by LLCs are highly flexible. Finally, the LLC also provides advantages for investors over the corporate form(25). Corporate formalities, such as management by a board of directors(26), need not be observed, and profits and losses can be shared without regard to the amount

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(22) Robert W. Hamilton, supra note 19, pp.40-41.

(23) I.R.C. §1361(b)(1)(d) (West 1995).

(24) I.R.C. §1361(b)(1)(A)-(C) (West 1995) A further restriction prevents S-corporations from being a member of an affiliated group. I.R.C. §1361(b)(2)(a) (West 1995).

(25) LLCs will not qualify for pass- through taxation if they are publicly traded. *See* I.R.C. §7704 (West 1995). One can imagine a situation where investors would choose to organize a publicly-traded entity as an LLC rather than a corporation. Although the form would not provide tax advantages, it would have greater organizational flexibility; Maizes, Rachel, supra note 4 at 583.

(26) Carter G. Bishop & Daniel S. Kleinberger, Limited Liability Companies: Tax and Business Law, ¶3.08[4][a] at 3-24 (1994) (noting that most LLC statutes provide default rule of decentralized management, and of those statutes that provide for centralized management, only one state, Colorado, does not allow members to change rule).

or form of capital invested[27].

LLC statutes permit members either to manage the LLC or to choose members or non-member managers[28]. In a member-managed LLC, each member is an agent of the LLC, and the LLC is bound by the acts of any member having actual or apparent authority. In contrast, members of a manager-managed LLC are not agents of the LLC. While interests in an LLC are assignable, as in a partnership, assignment of an interest does not automatically provide the assignee with management rights. Some statutes even permit the formation of an LLC with only one member. However, the Internal Revenue Service has not yet ruled on whether a single member LLC would be classified as a partnership for income tax purposes.

U.K. LLP

The U.K. LLP comes into existence only upon incorporation. For an LLP to exist, two or more members must be associated for the carrying on of a lawful business with a view to profit.

As with a company, a limited liability partnership has a separate legal personality, which means that it has its own assets and liabilities distinct from its members[29]. This corporate personality route was adopted, apparently, to meet concerns about international recognition of limited liability. U.K. LLPs have continuing legal personality, so may hold property and continue in existence despite changes in membership. They have unlimited capacity[30].

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(27) Id. ¶3.09[4], at 3-36 to 3-37("[E]ntity can allocate profits and losses in a way that deviates from normal or past profit or loss percentages or that is out of proportion to the owners' respective capital interests.... Corporations generally lack such flexibility."); Maizes, Rachel, supra note 4, at 584.

(28) *See, e.g.*, DEL. CODE ANN. Tit. 6, §18-402 (1992) (amended 1994); N.Y. LIMIT. LIAB. CO. LAW §401 (1994); U.L.L.C.A. §404 (1994) (amended 1995). Most states provide for a default rule of member management. Bishop & Kleinberger, supra note 24, at ¶1.01[4][c], at 1-12. Colorado requires that an LLC be managed by managers. COLO. REV. STAT. §7-80-401(1) (1990) (amended 1994). However all members can be managers. Bishop & Kleinberger, supra note 24, ¶7.02[1], at 7-5 n.4.

(29) Sarah Holmes, *United Kingdom: Limited liability partnerships*, 20 International Financial Law Review, p.87 (Jun/2001).

(30) Judith Freedman, supra note 2, at 908.

An LLP must have at least two members who are called designated members: they have special responsibilities primarily relating to audit. These two members have many of the characteristics of directors in that they are under a statutory duty and are subject to disqualification proceedings for breach of that duty[31]. If an LLP carries on business with a single member, that single member will become personally liable if he trades on for six months or more knowing he is the only member[32].

All members of an LLP can participate in the management of an LLP and still retain the benefits of limited liability. Internal relations of LLP are left to the members and no written constitution is required. This scheme is entirely suitable for the large professional firms which this legislation was first drafted for. As the LLP was opened up to all, however, it was decided to introduce, in the regulations, default provisions, based on partnership law, for any firm not providing its own agreement[33].

These default provisions include equal sharing of capital and profits and that every member may take part in management. There is no general duty of good faith, but there are specific duties in the regulations (subject to contrary agreement) to account for competing activities and use of partnership property[34]. This "half-way house" is the result of late pressure on the government[35]. It is intended to give complete flexibility but then plug the gaps in cases where there is no agreement. The result is a very limited standard form which may not satisfy anyone. The use of provisions borrowed from partnership law does not guarantee the certainty of partnership law treatment in these circumstances[36].

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(31) Sarah Holmes, supra note 29, at 87.

(32) Judith Freedman, supra note 2, at 908

(33) Limited Liability Partnership Regulations, (2001)/1090, Part VI

(34) Judith Freedman, supra note 2, at 912.

(35) DEPARTMENT OF TRADE AND INDUSTRY, LIMITED LIABILITY PARTNERSHIPS REGULATORY DEFAULT PROVISIONS GOVERNING RELATIONSHIP BETWEEN MEMBERS CONSULTATION PAPER (2000) and accompanying text.

(36) Judith Freedman, supra note 2, at 913.

Similarly, the application of company law provisions may not be straightforward. When it comes to disputes between members, section 459 of the Companies Act 1985 is applied. This permits a member to apply to the court on grounds of unfair prejudice and usually results in an order that that member (if unfair prejudice is proved) should be bought out by the other members. Inclusion of this provision was contentious and the section has been amended in relation to LLPs to permit the members of an LLP to exclude the right to make such an application for such period as shall be agreed by unanimous agreement in writing. How the courts will apply section 459 to LLPs remains to be seen. It is curious that the ideas behind the section can be traced back to partnership law: here they are re-applied via a corporate route.

The internal relations of an LLP are therefore left very flexible but concerns about absence of provisions have resulted in an uneasy mix of partnership and company law being put in place to plug any gaps. Just how this will develop will be a matter for the courts, but it may be hard to give definite advice to LLP users for some years[37].

External relations of LLP are governed by section Six of the LLPA. Contracts are with the partnership, entered into with members as agents, so that individual members will be bound only if there is also a contract with them personally. The usual rules of agency apply to determine who may bind the partnership. Generally, it will be the partnership that will be liable to third parties in tort. The objective of creating a limited liability partnership is to protect members who are not personally negligent or wrong doing[38].

Ⅴ. Uses

U.S. LLC

The LLC is useful for any business or estate plan where the owners desire limited liability, pass-through tax treatment, and the ability to control.

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(37) Ibid, at 913.

(38) Ibid, at 909, 910.

Thus the steady growth in the use of LLCs rather than corporations for small businesses there should not be surprising. An LLC is preferred to a general or limited partnership because no person or entity needs to assume the liability exposure of a general partner. All members can participate in the management of the business without bearing personal liability for the debts of the company. Since owners can be either individuals or entities, the LLCs are well-suited for joint ventures including real estate, oil and gas, plant construction and research and development. LLCs are well-suited for small businesses, professional service firms, closely held businesses, and as an operational estate planning tool.

Because the LLC does not have restrictions regarding who can be owners or what can be owned, it is useful for venture capital transactions where member investors, corporate and otherwise, want both pass-through tax treatment and the ability to directly control business operations. Similarly, an LLC can be a useful entity for acquisitions, because it is permitted to differentiate among the members with respect to distribution, management, and voting rights. As practitioners become more familiar with LLCs, their expanded uses are reported[39].

Which businesses would benefit to be classified as LLCs[40]?

1. Actively run business with a limited number of owners which enjoy limited liability and the flexibility of pass-through (partnership) tax treatment.
2. New businesses wishing to pass possible early-year losses along to owners.
3. Anyone considering the formation of an S corporation should review the limitations and restrictions and consider an LLC.
4. Existing partnerships wishing to extend limited liability to all members,

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[39] Bagley, William D, supra note 9, at 29.

[40] *See* Jerry Riles, *The ABCs of LLCs*, The National Public Accountant, pp.36 and 42, (Sep/2003).

5. Businesses planning to hold property that will appreciate, such as real property. The LLC is a true pass-through tax entity and allows a business that will hold appreciating issues to avoid double taxation.
6. Sole proprietorships, which enjoy the simplest form of business operation and desire limited liability.
7. Companies in need of venture capital, as limited liability will be most attractive.
8. Equipment leasing companies. New businesses that are involved in equipment leasing should investigate this possible SE tax-saving opportunity, while existing LLCs should review their operating agreements to ensure that the limited partner requirements are met.
9. Growth businesses. Due to the flexibility of the LLC statutes, the drafting of regulations can provide for corporate-style governance (C or S) and capital structure, partnership tax status where only one level of tax is levied or individual taxation.
10. Businesses that hold tangible personal property or intangible assets, high technology and research and development businesses, and natural resource holding.

U.K. LLP

An LLP has many advantages over a limited partnership, in particular the lack of any upper limit on the number of partners, and the ability of partners to participate in the management of the entity without losing limited liability. The flexibility it offers in terms of contributions and withdrawal of capital and income also place it at an advantage over a limited company(41).

One reason for setting up an LLP rather than a general partnership is that floating charges are available to the former and not the latter. This may assist with borrowing, although in the case of very small business, lenders are apt to insist on personal guarantees in any event. The LLP might be help-

(41) Sarah Holmes, supra note 29, at 87.

ful for certain types of business, which could support a floating charge, but these are likely to be the minority(42).

The LLP came about because of the needs of large professional firms. It remains to be seen whether it has met their needs. The availability of this legal form for all firms is welcome, in so far as there is no justification for confining it to professionals, but it occurred more by accident than design, as the result of practical considerations and arguments about parity. It was not designed to meet a perceived need. The case for the LLP as an ideal package for small trading businesses is not made out. Its rules governing external relations offer no simplification and little reduction of red tape as compared with companies. The extent to which limited liability is available for the wrongdoing or negligent member is unclear. There is certainly a greater regulatory burden than for general partners and sole traders. Internal relations are very flexible, as for general partnerships, but considerable freedom can also be achieved by U.K. private companies even now. The corollary of this freedom is the absence of a reasonably comprehensive standard form constitution, meaning that LLPs will be a well advised to have agreements either tailored for them, or standard forms purchased from commercial advisers(43). Many small firms do not seek limited liability and will find it difficult to obtain that anyway, since creditors will require personal guarantees and security. For these firms, the general partnership especially with some of the improvements proposed by the Law Commission-already offers a stable vehicle for businesses(44).

Ⅵ. Conclusion

The U.S. LLC is a statutory business entity that fits between the corpo-

(42) Judith Freedman, supra note 2, at 912.

(43) Judith Freedman, supra note 2, at 915.

(44) Deborah De Mott, Transatlantic Perceives on Partnership Law: Risk and Instability (public lecture delivered at IALS March 1, 2001) has pointed out that partnership law is already more stable in the United Kingdom than in the United States and that this should make the incentive to create alternative organizational choices weaker; *See* Judith Freedman, supra note 2, at 915.

ration and the partnership. It fills the business need recognized, but not satisfied, by the S corporation and the limited partnership(45). The LLC provides for a variety of non-tax business advantage, including flexible management choices, flexible capital structure, liberal member qualification requirements, and limited liability for its members. These advantages are causing the LLC to replace the general partnership, the limited partnership, the S corporation as the better alternative. It is also the vehicle of choice for joint ventures, especially corporate joint ventures.

And the LLC is beneficial because it can be custom tailored to the needs of a small businesses; it can provide something for everyone. The LLC is flexible by allowing different classes of ownership interest and has less restrictions on members. Based upon these factors, the LLC is becoming the "hot" business form and will continue to grow in popularity as the entity of choice for the future(46).

Many states continue to record the formation of more new corporations than new LLCs. There are several possible explanations. The simplest is that old habits die hard. A second is that documentation for an LLC may be more complex than that of a corporation because of its increased flexibility. Many corporation service companies continue to use corporate forms for this reason. Since almost entities with publicly traded ownership interests are corporations, a start-up business that contemplates or hopes for an initial public offering ("IPO") may elect to become a corporation from the outset. Venture capital also may prefer to deal with a corporation rather than an LLC because of control considerations that revolve around the creation of special classes of preferred shares(47).

The U.K. LLP was created as a result of political pressure arising in part from competition from overseas jurisdictions prepared to provide LLPs. The legal form created in the United Kingdom, however, is not the result of an

(45) Bagley, William D. supra note 9, at 17.
(46) William H Copperthwaite Jr. supra note 1, at 238, 239.
(47) Robert W. Hamilton, supra note 19, at 41, 42.

evolutionary process directly related to those overseas legal forms. It is an artificial creation, a fusion of partnership and company laws, created in this way as a direct result of its origins, the expertise made available for its creation, and the time limits due to political promises which means that it could not be considered as part of the very extensive program of business organizations reform currently under way in the United Kingdom. The result is a legal form which combines corporate and partnership attributes. This may eventually create an interesting fusion but much uncertainty seems to lie in the way before the courts have delineated their approach to LLPs(48).

More legal forms mean more choices. However, is it necessarily a good thing? All that most small businesses want to do is get on with their business. Intuitively, the LLP may sound better tailored to the needs of a small firm than either the limited company or the general partnership, but intuition is not necessarily reliable. Those now arguing that LLPs are suitable for small businesses may bring pressure to bear for modifications and improvements of the LLP so that they become the vehicle of choice for small firms in the future, but they are not the obvious choice for most small firms at present(49).

(48) Judith Freedman, supra note 2, at 914, 915.
(49) Ibid, at 915.