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BUSINESS BRIEFING LLP v Ltd Co

Introduction

The Limited Liability Partnership (LLP) came into being in the UK in 2001 and today there are over 15,000 registered. Its introduction made it possible for many businesses to buy into the concept of limited liability but without the need to register as a limited company.

Effectively, the LLP is a half way house between the unincorporated entity such as sole practitioner or partnership and the traditional limited company. It offers an element of flexibility with no requirement for any formal constitution, is transparent for tax purposes with no corporate taxation applying and provides limited liability for its members. It introduces however an element of accountability in terms of some filing requirements, including the accounts.

Whilst no formal constitution is mandatory without some sort of agreement between members, decisions may bring into effect the default provisions set out in the LLP Act 2000.

The following is a brief comparison between the LLP and the Limited Company which summarises issues to be considered when deciding which corporate entity to select.

	Ltd. Co.	LLP
Regulations Liability	Companies Act 2006: Limited to amounts unpaid on shares.	LLP Act 2000: Limited to the amount of capital agreed to be contributed in the event of winding up.
Constitution	Memorandum and Articles of Association govern the powers to act and form the rules of the company and must be filed at Companies House.	Agreement between members recommended but not mandatory and no requirement to file at Companies House.
Status	Has a separate legal personality. Can own land, sue and be sued in its own name.	As the Ltd. Co.
Capital	Minimum share capital is 1p (plc £50,000. One share must be in issue (private co). Shares can be divided into different classes and different denominations with varying rights.	No regulations on capital. Capital not divided into shares.

Remuneration	Payments are made by salary and for dividends from distributable reserves.	Members may draw on their profits within the terms of their agreement.
Taking out Capital	Not generally permitted although may be able to purchase or redeem company's own shares.	Depends on agreement.
Management	Private company requires only one Director. PLC requires a minimum of two Directors. Directors can be corporate and resident outside the UK (though not if sole trader).	At least two members are required. Members can be corporate and resident outside the UK.
Members	Companies limited by shares or guarantee require only one member. Plc and unlimited companies require two.	Two members required.
Decisions	The Companies Act specifies majorities required for many resolutions.	The LLP Act sets out some majorities otherwise unanimous consent is required unless the agreement specifies otherwise.
Meetings	The Companies Act requires an AGM, although a private company can elect not to hold one.	No regulations on meetings.
Investment	Outside investors may contribute share capital (and taken an equity stake without becoming a director) or loans.	Outside investors can only contribute loan capital. Only members can take an equity stake.
Borrowings	Debentures and fixed and floating charges.	As the Ltd. Co.
Written Resolutions	Members may pass resolutions by means of written resolutions.	Depends on the agreement.
Disclosure	Accounts, Annual Return, notice of change of Director/Secretary/R/O Mortgages, change of name, resolutions.	Same as Ltd Co. save for the agreement. Reference to director and secretary are replaced with member and designated member.
Auditors	Auditors required only where the turnover threshold is reached . currently £6.5m, or the net asset threshold reached . £3.26m.	Same as Ltd. Co.
Taxation	Corporation Tax applies.	Members taxed as individuals. No corporate taxation.
Capital Gains	On company and the members	On members (and LLP if insolvency)
NIC's	Class 1 for Directors and employees.	Class 2 and 4
Registration as Charity	Possible for a company limited by guarantee.	No

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