

# Limited Liability Partnerships vs. Limited Companies



## Legal Entity

There are a number of factors to take into account when comparing Limited Liability Partnerships (LLP) and Limited Companies (LTD).

at Companies House. All directors must be registered at Companies House.

## Liability of owners

### Legal Entity

**LLP & LTD:** Both are legal entities in their own right, capable of entering into contracts and holding the title to assets.

## Capital - minimum

**LLP:** None. Partners can fund the business with debentures or unsecured loans ranking equally with other unsecured creditors.

## Risk protection

## Formality

## Capital - minimum

## Employment rights

## Incentives and rewards

## Internal goodwill

## Sale process

## Tax on profits

## Tax on owners' incomes

## Tax on sale

## Inheritance tax

## FSA Considerations

## Other Considerations for LLPs

## Audit Implications

### Liability of owners

**LLP:** On winding up, each partner's liability is restricted to their formal capital and certain unallocated profits, except that they have a joint and several liability for stamp duty land tax.

**LTD:** On winding up, the shareholders' liability is restricted to any outstanding calls on share capital.

**LTD:** Can be as little as one penny issued and paid up for a private company. PLCs must have at least £50,000 share capital with at least 25% paid up.

## Employment rights

**LLP:** Partners only rights are those given in a partnership agreement.

**LTD:** Directors are generally employees, protected by employment law.

### Risk protection

**LLP:** Partners have protection under tort and contract law. A partner might still be liable for his own negligence.

**LTD:** Provides shareholders with protection under tort and contract law. A director might still be liable for his own negligence.

## Incentives and rewards

**LLP:** Promotion to partnership for high flyers; bonus paid via profit share is taxed at up to 41%. Partners retain control via partnership agreement.

**LTD:** Bonuses subject to income tax and NIC at up to 41% also attract employer's NIC at 12.8%. Share option schemes are complex, and costly to administer.

### Formality

**LLP:** Governed by partnership deed which is a private document and will not be filed at Companies House. Partners in the LLP are called members. At least 2 must be designated members who have additional legal and other duties. All members must be registered at Companies House

**LTD:** Governed by The Memorandum and Articles of Association; which must be filed

## Internal goodwill

**LLP:** Members can decide to ascribe no value to its goodwill, so a retiring partner takes only his capital, loan and current account balances. Avoids costly valuation exercises whenever partners leave.

**LTD:** Retirement bonuses to retiring directors may be costly in tax terms.

## Limited Liability Partnerships vs Limited Companies

There must be a formal share valuation agreed with HMRC if director sells his shares on retiring (or at any time).

### Sale process

**LLP:** Buyers prefer to buy business assets because of reduced due diligence and less reliance on sellers' warranties and indemnities. Normally reduced transaction costs.

**LTD:** Shareholders prefer to sell a company to avoid duplicate tax cost (see below). Greater due diligence, warranties and indemnities risk for sellers. Normally increased transaction costs.

### Tax on profits

**LLP:** The LLP is transparent. Partners are taxed on all profits.

**LTD:** Corporation tax at 21% on profit up to £300,000, 29.75% on next £1.2m, 28% thereafter

### Tax on owners' incomes

**LLP:** Self employed and taxed under Schedule D. Top rate is 51% including NIC. Tax liabilities are personal; if a partner defaults there is no come back on the LLP or the other partners.

**LTD:** Employed and taxed under Schedule E. Top rate is 51% including NIC. BUT company suffers 12.8% employer's NIC on all remuneration. Dividends escape all NIC but taxed at 32.5%. Must pay over PAYE & NI.

### Tax on sale

**LLP:** Partners can sell business assets and are taxed personally on gain at 18%, subject to possible entrepreneurs' relief. The LLP will not be liable for any tax.

**LTD:** Gains from selling share capital are taxed at 18%, subject to possible entrepreneurs' relief. Sale of business assets by the company results in tax of 21% to 28% of the gain for the company, with the acquisition cost adjusted for

inflation. Further tax on extraction of the net gain from the company.

### Inheritance tax

**LLP & LTD:** Business property relief at 50% or 100% may apply to both an interest in an LLP's assets and shares in a Ltd company.

### FSA Considerations

**LLP:** Regulatory capital rules probably mean an FSA member LLP must have some formal capital, use of subordinated loans from partners, but Tier2: Tier1 ratio restriction and all earnings of partners are excluded from Annual Expenditure calculation.

**LTD:** Paid up capital will be dictated by FSA capital requirements and only discretionary bonuses are excluded from Annual Expenditure calculation.

### Other Considerations

**LLP & LTD:** Companies House Filing is required within 9 months of period end for LLPs and a private company and 6 months for a plc

**LLP & LTD:** Accounts will require an audit unless it is a small or dormant company or LLP. In general no exemption from audit is available for an FSA regulated entity.

Abbreviated accounts can be prepared and filed at Companies House provided the LLP or LTD meets the requirements.

Specific advice should be obtained before taking action, or refraining from taking action, on any of the subjects covered above.

### LONDON

10 Orange Street  
Haymarket  
London  
WC2H 7DQ

**T** +44 (0)20 7312 0000  
**F** +44(0)20 7312 0022  
**E** advice@shipleys.com

### GODALMING

3 Godalming Business Centre  
Woolsack Way  
Godalming  
Surrey  
GU7 1XW

**T** +44 (0)1483 423607  
**F** +44 (0)1483 426079  
**E** godalming@shipleys.com

### SAFFRON WALDEN

Market House  
10 Market Walk  
Saffron Walden  
Essex  
CB10 1JZ

**T** +44 (0)1799 521301  
**F** +44 (0)1799 523854  
**E** saffron@shipleys.com

### BIRMINGHAM

2nd Floor  
3 Brindley Place  
Birmingham  
B1 2JB

**T** +44 (0)121 698 8566  
**F** +44 (0)121 698 8600  
**E** birmingham@shipleys.com



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