



The small print for BIG IDEAS

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Client Reference Number: **[Confidential]**  
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**Privileged & Confidential**

By email to: **[Confidential]**

Dear **[Confidential]**,

**Re: Your appointment with qLegal on 23 November 2021.**

**How we work:**

Thank you for attending your appointment with us and for using the services of qLegal at the Queen Mary University of London. Although we cannot provide you with representation in any proceedings and do not hold ourselves out to be a firm of solicitors or patent attorneys, our advice is free, and we aim to provide the same high standard of service expected in the practice of law. Please note that the legal advice provided is in relation to the laws of England and Wales only. If you require advice outside of this jurisdiction, please contact us.

**Summary of the facts and documents you have provided:**

We understand that you are currently involved in the development of a mobile application (the “**App**”) to help users to **[Confidential]** (the “**Business**”). The App is currently at the development stage and is being developed by three of your friends (collectively referred to as the “**Friends**”).

You mentioned that you are currently part of an incubator at Queen Mary University of London (the “**Incubator**”). You also mentioned that you have applied for funding towards the building of your business plan and structure as part of a competition held by Queen Mary University of London, as part of their entrepreneurial/start-up support society.

As part of the advice received by you from the Incubator, you wish to incorporate a limited liability company (the “**LLC**”) for your Business as part of your initial steps towards the Business. Your goal is securing further investments in the Business and structuring the management and operation of the Business. Thus, you are seeking advice and information towards the incorporation of an LLC for the Business.

During the appointment you provided us with two scenarios:

- 1) Where you would be the sole owner of the LLC and shall have the complete shareholding, control, and management rights of the LLC.

- 2) Where you and the Friends shall be the joint and equal owners of the LLC and the shareholding, management, and voting rights in and to the LLC concerning the Business. The LLC shall be jointly and equally owned and controlled by you and the Friends in an equal ratio of 25% each.

We further understand that there has been no capital invested in the Business by you and/or your Friends. Should you be awarded the grant for your Business by the Incubator as prize money for the competition (the “**Award**”), the same shall be in the form of a grant towards your Business, and the Incubator does not currently, or post grant of the Award, own any rights or shareholding in and to the Business or the LLC incorporated.

**Scope of our advice:**

You have sought the following advice from qLegal:

- How can you incorporate the LLC for the Business before Christmas 2021?
- What are the legal and practical implications of incorporating the LLC based on the facts provided by you?

**Summary of Advice:**

To incorporate the LLC in the United Kingdoms, you would need to follow the following procedure:

1. Finalise the name of your LLC;
2. Choose a registered office address for the LLC (this needs to be in the same country where the LLC is registered);
3. Identify the nature of your Business (i.e., the Standard Industrial Classification for the economic activities to be carried out by the Business);
4. Decide on the shareholding structure of the LLC;
5. Decide if you wish to proceed with the incorporation of the LLC online or via physical post;
6. Identify and appoint the directors of the LLC;
7. Identify the person with significant control (“**PSC**”) in the LLC, and file the PSC’s details in the PSC register to be submitted to the Companies House; and
8. Adopt the Articles of Association and Memorandum of Association of the LLC and file the same with the Companies House.

Online registration usually takes 24 hours and the fee for such registration is £12. Postal applications generally take 8 to 10 days from the receipt of the application by the Companies House and cost £40. For the registration to be finalised by Christmas 2021, you should ideally start with the registration by 15 December 2021.

**Explanation:**

**1. What are the different business structures available for you in relation to your Business and the advantages and disadvantages of each?**

When starting a new business or start-up, one of the initial but very important steps for the business owner is to identify the legal structure of the business. Each business structure whether a sole trader, partnership, or limited company, comes with its own legal, practical, tax, and other advantages and disadvantages. Under this section, you will find a brief background of the different structures and a comparison between the same.

**(a) Sole Trader**

A sole trader is someone who sets up and owns their own business; the owner reaps the complete rewards and benefits of the business but also has unlimited liability towards the business. Unlimited liability in this context means that the sole trader is personally responsible for all the liabilities and losses arising out of the business. Below are the advantages and disadvantages of operating and managing a business as a sole trader:

Advantages	Disadvantages
You hold complete control over your business and are absolutely and solely in charge of all decision making concerning your business	Unlimited liability – Putting your personal property at risk
Easy to set up and relatively little paperwork	Lack of employee benefits – As you are working and managing your own business, if you take a sick day or want a two-week holiday, you won't get paid
Greater privacy without the need to file documents (such as accounts) at a public registry	Irregular income – You will be paying the running costs of your business, regardless of income
Cheaper costs – No formation fees and cheaper options with accountancy services	100% of the profits are taxed
Less administration – No company accounts or corporation tax returns to complete for HM Revenue & Customs (“HMRC”). No additional paperwork to complete year on year for Companies House	Image – some companies may not engage with a sole trader for reliability reasons

**(b) Limited Liability Company**

An LLC is a type of business structure with its own legal identity, separate from its owners (shareholders or guarantors) and its managers (directors). This means that the personal assets of the owners are not at risk as the risk is limited to their investment. Likewise, the directors will not be personally liable for the LLC's debts unless they have been guilty of some wrongdoing (e.g., fraudulent trading).

An LLC can be limited by shares or by guarantee. In a company limited by shares, the shareholders' liability is limited to the share capital, i.e., the amount the shareholders have agreed to pay for their shares. In a company limited by guarantee, there is no share capital, and the liability is limited to the amount of the guarantee set out in the company's Articles of Association (the "AOA").

An LLC is governed by company law and a constitution normally referred to as AOA. AOA is effectively a written rule book that prescribes how the company must be run. This is a public document filed at the Companies House during registration, which anyone can inspect. Some limited companies also have a separate *Shareholders' Agreement*, which regulates the relationship between the shareholders or guarantors (owners) which document does not have to be filed at Companies House and therefore has the benefit of being confidential.

One of the biggest advantages of having an LLC is that the company has limited liability which means that, unlike sole traders and partnerships (excluding limited liability partnerships, which also have limited liability on the partners and is a separate entity from its partners), the LLC is a legal entity separate from both its owners (shareholders or guarantors) and those people who run it on a day-to-day basis (the directors).

The advantages and disadvantages of operating and managing a business under an LLC are:

Advantages	Disadvantages
Liability is limited to the guarantee or investment made in the company by the respective guarantors or shareholders	Company formation fees payable
A company is more appealing to prospective clients and investors giving them the impression of a professional and reputable business	Annual accounts and tax returns need to be submitted by the company to HMRC and the Companies House
A director is not bound by minimum wage, therefore benefits from tax advantages	Accounts and documents relating to the company are published on the publicly available to the Companies House
Your company name cannot be used by anyone else and has proprietary rights	More complex accounting and taxation requirements
There is an element of control over when profits are distributed, which can bring tax efficiencies	Dissolution of the company is more difficult than in other types of structures for running the business

### (c) Partnership Firm

A partnership is a type of business structure whereby two or more people pool together their investment and knowledge to create a business. This structure is like that of a sole trader. Each partner of the firm reaps the benefits and rewards of the business but is also responsible for the liabilities and losses, including those of limited liability partners (investors that have limited liability and do not get involved in the management of the business).

There are three types of partnership: (1) **General Partnership**: all partners are involved in the day-to-day decisions and running of the business and are personally responsible for all liabilities of the

business and share their respective percentage of revenues/profits from the business; (2) **Limited Liability Partnership (LLP)**: all partners are protected by the limited liability status up to the investment made by them in the partnership and therefore not putting their possessions at risk towards the liabilities/losses of the LLP; (3) **Limited Partnership**: This is a mixer of general partners and limited liability partners in a partnership firm.

The advantages and disadvantages of operating and managing a business as a **General Partnership** firm are as follows:

Advantages	Disadvantages
A General Partnership has low start-up costs and minimal administration costs	A General Partnership has unlimited liability for all the partners involved
Splitting of revenues/profits between partners can be tax advantageous	Occasional disagreement between partners may represent a hurdle in controlling and operating the business. However, the partners of the General Partnership firm may execute a partnership agreement between them to regulate the operation and control the working and business of the partnership firm.
Business affairs are confidential between the partners	Dissolution/splitting of the partnership (valuation of assets, etc.) is difficult
The burden of running the business is shared between the partners	Unlimited liability and the capital investments are to the sole burden on the partners much like a sole trader. However, the same is not applicable in case of an LLP.

## 2. How do these different business structures compare against each other?

For ease of reference and understanding, below is a comparison between the three legal structures for running the Business:

Heading	Sole Trader	General Partnership	LLC
Setting – up	No costs for setting-up and fewer registration requirements/documents to be filed	A General Partnership does not need to be registered; however, an LLP requires to be registered with the Companies House	The LLC must be registered with the Companies House. Registration requires incorporation costs
Separability	No separate entity	No separate entity However, LLP comprises a separate legal entity	The LLC is considered as a separate legal entity
Liability	Unlimited personal liability	Unlimited liability in a General Partnership. In LLP, liability is limited to the capital investment	Liability is limited to the share capital (LLC limited by shares) or the amount of the guarantee (LLC limited by guarantee)

Capital funding	Self-funded	Self-funded by partners	Funded by investors
Tax benefits	Taxation as self-employed. Taxation rates proportional to income (2021-2022): - 20% for £12,500 - £50,000 income - 40% for £50,000 - £150,000 income - 45% for > £150,000 income	Taxation as self-employed. See taxation rates in the Sole Trader section	Corporation tax: Currently 19%

**3. What would be the key legal and practical implication of the formation and incorporation of the LLC concerning the two scenarios mentioned above in the *Summary of the facts* provided by you?**

As mentioned above in the *Summary of the facts*, we understand that you are planning to carry out your Business activities under an LLC structure, either (1) as the sole owner (shareholder) of the LLC and have 100% control over the LLC or (2) together with your Friends in a manner that each of you will be equal shareholders of the LLC and have 25% control over the LLC.

The key legal and practical implications of incorporating the LLC under the separate scenarios for you to be aware of are:

Sole ownership and management over the LLC	Shared ownership and management over the LLC
You will have complete ownership of the LLC	You will have 25% ownership of the LLC
You will solely enjoy the dividends/profits of the LLC	All the dividends/profits of the LLC will be equally shared between you and your Friends unless agreed otherwise.
You will have complete control over the LLC and could solely decide on all the decisions	The LLC will be equally controlled by you and your Friends, i.e., each person will have 25% voting rights, therefore, you could be outvoted in certain decisions
	You and the Friends will share the burden of rendering all Business decisions and controlling the LLC
You will have to pay the entire share capital or be liable for that	The share capital or the guaranteed amount will be paid by you and your Friends equally
You can still employ the Friends towards the development of the App on a retainer or consultant basis without losing out on any profits in and to the LLC/Business	Running your Business under this structure may be difficult due to disagreements between the shareholders of the LLC

Based on the above, you could choose your structure and shareholding of the LLC to be incorporated into the Business.

#### 4. What is the procedure towards incorporating and registering an LLC in the United Kingdom?

Once you have decided on which of the two LLC scenarios is your preferred option, you must incorporate and register your company with Companies House. The registration can be performed online or via post. Below is a simple step-by-step process towards the incorporation of the LLC together with all the documents that are required for the same:

No.	Step	Documents	Other important information
1.	Choose the name, address, and business activity	N/A	<p>The acceptable name for your LLC:</p> <ul style="list-style-type: none"> <li>- cannot be the same or too similar as another registered company's name (similarity can be reviewed by the <a href="#">online search engine</a>)</li> <li>- must usually end in either 'Limited' or 'Ltd'</li> <li>- must not be offensive or contain a 'sensitive' word or expression</li> <li>- must not suggest a connection with the government or local authorities, unless so permitted</li> </ul> <p>The LLC's address must be a physical address in the UK, and in the same country as where your company is registered.</p> <p>You will also have to choose your LLC's nature of business. Standard industrial classification (SIC) of economic activities contains a list (available <a href="#">here</a>) from which you will have to find your nature of business code and provide it in your registration.</p>
2.	Appoint the director	N/A	<p>The LLC must have at least one director. The director is legally responsible for running the LLC and has certain obligations, including:</p> <ul style="list-style-type: none"> <li>- follow the rules of the company stated in the LLC's AOA</li> <li>- keep the company records and report changes (list of records available <a href="#">here</a>)</li> <li>- file accounts and company tax returns</li> <li>- inform the shareholders of the transactions from which the said director might personally benefit</li> <li>- pay corporation tax</li> </ul> <p>The director must be a person over the age of 16, regardless of nationality, who has not been disqualified from being a director. The director can be the same person as the shareholder.</p>

			You can also choose and appoint the company secretary; however, this is not obligatory.
3.	Decide on the shareholding structure	N/A	<p>The LLC must have at least one shareholder or guarantor. Companies limited by shares are set up with share capital. This means that the company is divided into shares belonging to one or more shareholders. Each share represents a percentage in the company. The price of an individual share can be any value. To limit the shareholder's liability, the amount of the share can be smaller (e.g., £1).</p> <p>If the LLC is limited by shares, you will have to provide a <i>Statement of Capital and Information on Prescribed Particulars</i>.</p> <p><i>Statement of Capital</i> contains information about the shares, i.e.:</p> <ul style="list-style-type: none"> <li>- the number of different classes of shares of the LLC</li> <li>- the total value of the shares (share capital)</li> <li>- names and addresses of all shareholders</li> </ul> <p><i>Information on Prescribed Particulars</i> includes information on:</p> <ul style="list-style-type: none"> <li>- what share of dividends do the shareholders are entitled to</li> <li>- whether shareholders can exchange their shares for money</li> <li>- whether shareholders can vote on certain company matters</li> <li>- how many votes do the shareholders get</li> </ul> <p>LLCs limited by guarantee are set up without share capital, therefore only the information on the guarantors must be provided in your application.</p>
4.	Identify persons with significant control	PSC register	PSC are those that own or control the LLC. Most persons with significant control in the LLC are those who: (a) hold more than 25% of shares; (b) hold more than 25% of voting rights, or (c) have the right to appoint or remove the majority of the directors. The LLC is required to submit the PSC register with details of the PSCs of the LLC to the Companies House.
5.	Draft incorporation documents	<ul style="list-style-type: none"> <li>- Memorandum of Association ("MOA")</li> <li>- Articles of Association</li> </ul>	MOA is a legal statement signed by all initial shareholders or guarantors agreeing to form the LLC. The physical MOA (template available <a href="#">here</a> ) must be drafted and signed if the registration is performed via post. If registration is performed online, the MOA will be created automatically online as part of your registration.



			<p>AOA are written rules about running the company agreed by the shareholders or guarantors, directors, and the company secretary (if any). You can either use the standard AOA (available <a href="#">here</a>) or write your own and upload or send them with your registration.</p> <p>Additionally, drafting AOAs of the LLC by yourself would require involvement of lawyers and would lead to increased costs towards the incorporation of the LLC.</p>
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**(a) Registration**

If you decide to register via an online registration platform (available [here](#)) you can follow a step-by-step registration questionnaire. In the questionnaire, you will provide all the necessary information and documents.

If you, however, decide to register a company via post, you will have to complete a form IN01 (form and instructions available [here](#)), as well as submit the documents and information provided in the table above.

**(b) Timeline and cost**

Online registration usually takes 24 hours and the fee for such registration is £12. Postal applications generally take 8 to 10 days from the receipt of the application by the Companies House and cost £40.

**Next Steps:**

To incorporate an LLC for running your Business and continue with the development of the App, you should decide on one of the respective scenarios of the LLC:

- (i) If you wish to consider incorporating the LLC as a sole shareholder and owner of the LLC based on the information provided herein; however
  
- (ii) If you wish to incorporate the LLC along with the Friends as owners and directors of the LLC, what would be the extent of the Friend’s involvement, ownership, and control in the LLC?

Once you have decided on the structure, you should register your LLC with the Companies House following the step-by-step plan provided in point 4 above. For the registration to be finalised by Christmas 2021, you should ideally start with the registration by 15 December 2021.

We hope that the advice provides you with a comprehensive understanding of the legal questions you asked us to address. Should you require any assistance in any future matters, please do not hesitate to contact us.

We would be extremely grateful if you could take a few moments to complete this short form <https://qmul.onlinesurveys.ac.uk/client-feedback-on-qLegal-2021-22>, as your feedback is important to our educational development and the development of our services.

Yours sincerely,

**[Confidential]**  
**Student Adviser**

**[Confidential]**  
**Student Adviser**

**On behalf of qLegal**