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LANCASHIRE ENTERPRISE PARTNESHIP LIMITED – TRANSITION

Comparison of legal forms

Lancashire County Council

Private & confidential
Legally privileged

ENTITY	ADVANTAGES	DISADVANTAGES
Company Limited by Guarantee **(existing model)** Formed by incorporation under the Companies Act 2006. Each party is a member. Governed by its Articles of Association. It would have a board of directors including representations of each of the members which are corporate entities themselves. The board is responsible for day to day management of the company, subject to the Articles and any specific powers reserved to members.	► **Identity**– a company has a separate and clear legal identity as required by the LEP review. It can contract with third parties and hold property in its own right. ► **Limited liability** – the members' liability is limited to their guarantee amount in the statement of guarantee – usually a nominal amount of £1 or £10. ► **Conflicts of interest** – it is common for directors to be appointed by their members, and for the possibility of conflict to arise between company and member. It is familiar territory to make suitable provision for such possible conflicts. ► **Financial contribution** – there is no requirement for a member to make a financial contribution to the company upon joining. ► **Financial flexibility** – ability to create different types of loan capital and floating charges over its assets which may assist with raising external finance.	► **Formalities and compliance** – regulated by company law and requires formal administration. There is a requirement to file accounts and other information with Companies House on a regular basis. Such information is accessible by the public. ► **Directors' duties** – directors owe a strict fiduciary duty and other duties to the company and are personally liable for any breach. Director's insurance would need to be purchased to provide adequate protection. ► **Financial returns** – as there are no shares, it is not possible to distribute the profits of the company to the members. ► **External financing** – some banks might be cautious in approving any loans due to the lack of a share capital. ► **Tax** – unlike an LLP, the company will pay corporation tax on the profits that it makes before using the profit towards its cause.

	► **Assets** – a company can own its own assets. Existing assets of the members can be transferred into the ownership of the company. Alternatively a party may lease its assets to the company. However there may be tax implications in respect of such transactions. ► **Changes in members** – the company structure can accommodate the withdrawal of a party and the introduction of new parties (i.e. changing members of the company and their relevant board appointments) without it necessarily affecting the business (although consideration would have to be given to the procurement analysis if third party participation is required). ► **Profits** – will be applied to the cause/objects of the company. ► **Direct control** - Each member is an owner of the company and will have voting rights on decisions reserved to them and at an Annual General Meeting. If a party has a representative on the board of directors they have the ability to take part in the day to day management and control of the company. ► **Familiarity** – the form currently adopted by the LEP and very similar to a company limited by shares which is the most common form of	Companies limited by guarantee may also be unable to rely on group tax relief.

	company and is therefore familiar to most and has fewer surprises than others. ▶ **Membership** – since membership is not attached to the ownership of shares, it is usually easier to join or leave the company, and if necessary, can be attached to directorship – i.e. directors who cease to be members, will cease to be directors to, and vice versa. ▶ **Continuity** – as the existing entity is a company limited by guarantee, there would be less disruption and fewer additional formalities required.	
Company Limited by Shares Formed by incorporation under the Companies Act 2006. Each party is a shareholder. Governed by its Articles of Association. It would have a board of directors including representations of each of the parties. The board is responsible for day to day management of the company, subject to the Articles and any specific powers reserved to shareholders.	▶ **Identity**– a company has a separate and clear legal identity. It can contract with third parties and hold property in its own right. ▶ **Limited liability** – the shareholders' liability is limited to any unpaid subscription for shares. ▶ **Financial flexibility** – ability to create different types of share and loan capital and can create floating charges over its assets which may assist with raising external finance. ▶ **Assets** – a company can own its own assets. Existing assets of the shareholders can be transferred into the ownership of the company. Alternatively a party may lease its assets to	▶ **Formalities and compliance** – regulated by company law and requires formal administration. There is a requirement to file accounts and other information with Companies House on a regular basis. Such information is accessible by the public. ▶ **Directors' duties** – directors owe a strict fiduciary duty and other duties to the company and are personally liable for any breach. Director's insurance would need to be purchased to provide adequate protection.

	the company. However there may be tax implications in respect of such transactions. ► **Changes in shareholders** – the company structure can accommodate the withdrawal of a party and the introduction of new parties (i.e. outside investors) without it necessarily affecting the business (although consideration would have to be given to the procurement analysis if third party participation is required). ► **Profits** – will be distributed to the parties through payment of dividends or retained for reinvestment by the company. ► **Direct control** - Each shareholder is an owner of the company and will have voting rights on decisions reserved to them and at the Annual General Meeting. If a party has a representative on the board of directors they have the ability to take part in the day to day management and control of the company. ► **Familiarity** – as the most common form of company, it is familiar to most and has fewer surprises than others.	► **Tax** – unlike an LLP, the company will pay corporation tax on the profits that it makes before distributing it to shareholders which could lead to double taxation as any dividend received by the shareholders forms part of their income for calculation of their own tax liabilities. ► **Legal entity** – it is not possible to convert a company limited by guarantee into a company limited by shares. This would require the winding up of the company limited by guarantee and setting up a new company that is limited by shares and transfer of any assets and contracts.
Limited Liability Partnership (LLP)	► **Identity** – an LLP is a body corporate and has a separate and clear legal identity. It can contract with third parties and hold property in its own right.	► **Formalities and compliance** – there is a requirement to file accounts and other information on a regular basis which will be in the public realm, but formalities can

Formed by incorporation under the Limited Liability Partnerships Act 2000. Each party will be a member. Governed by a member's agreement (LLP agreement).	► **Management** – LLP members undertake the day to day management and actions of the LLP through acting as its agents. ► **Limited liability** – generally, the liability the members of an LLP is limited to the amount they have contributed to the LLP by way of capital contribution. It is the LLP itself, not its members, who are liable to third parties. ► **Changes in members** – new members may be admitted and existing members may leave without affecting the LLP as an entity. ► **Tax transparency** – the LLP does not pay corporation tax – instead members are taxed individually on the distributions they receive according to their own tax treatment.	be lighter than a company limited by shares. ► **Shareholding** – rather than transferring a shareholding (or issuing new shares) members hold interests in the LLP which can be more difficult to define and deal with in a vehicle that grows. ► **Legal entity** – it is not possible to convert a company limited by guarantee into an LLP. This would require the winding up of the company limited by guarantee and setting up a new LLP and transfer of any assets and contracts.