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## nursery and childcare news

# To be or not to be... a company

**Whether you are setting up a new business or have been trading for some time, you should ensure you are using the best type of business structure. The type of structure is important, so it is recommended you take advice if you are unsure about what is best for you and your business.**

The main structures and key features are listed below.

**Sole trader** (if you are in business on your own). You

- can make all decisions affecting the business
- own all the assets of the business
- are personally responsible for all the debts and obligations of the business

**Partnership** (if you are in business with one or more others). You

- share the right to make the decisions relating to the business
- share ownership of the assets of the business
- share the profits of the business
- share responsibility for all the debts and obligations of the business. However if one partner fails to pay his share the others must pay his share

**Private company** (if you are in business on your own or with others)

- a company is like an entity separate from the people who own and run it
- the company is owned by the shareholders and run by the directors, and they do not have to be the same people
- the company owns the assets of the business
- the company is responsible for all of the debts and obligations of the business, therefore your personal assets may be protected if the company gets into trouble
- there are rules about how the company can be run and especially how money can be taken out of it
- the company makes the profit and pays tax on it
- your earnings are paid to you by the company, and you pay tax on those

- once it is a certain size a company must have its accounts audited by an accountant

- certain information about the company (including its accounts) is available to the public

There is also a limited liability partnership (LLP), which is organised and taxed like a partnership but provides limited liability, like a company. However, like a company, certain information is available to the public.

It is a good idea for partners or shareholders to sign an agreement so that everyone is clear what they own and what they are responsible for. The law does not automatically do this for you and you do not have to share everything equally. Without an agreement, your business could be prevented from moving forward by differences of opinion on the direction of the business. You also need to address what happens if someone retires or dies.

### Points to note...

- Limited liability does not apply in all situations.
- Being in business with someone is a bit like a marriage – make sure you know and understand them before you start.
- Have a written agreement with your partners/fellow shareholders. It helps you to decide in advance how you would deal with problems which might arise.
- Take advice on your own position. What is right for one person is not necessarily right for another, particularly where tax is concerned.

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*This publication is not a substitute for detailed advice on specific transactions and problems and should not be taken as providing legal advice on any of the topics discussed.*

*The briefing can also be provided in electronic form. If you would prefer to receive it by email, please email John Parkinson at [briefings@bllaw.co.uk](mailto:briefings@bllaw.co.uk) and specify 'Nurseries' in the subject line.*

*If you do not wish to receive any similar mailings from Blake Laphorn Linnell in the future, please email John Parkinson at [john.parkinson@bllaw.co.uk](mailto:john.parkinson@bllaw.co.uk) or contact him on 01489 555044.*

