



The Law Society

Structuring your business

Lawyers for your business

Sole trader or partnership

Are you a sole trader who wants to share the burden of your business?

If yes

Consider forming a partnership (or indeed a limited company).

As a partnership, is there a risk of major liability eg, being sued for professional negligence?

If yes

All partners are fully liable. (With a limited company not only are the assets at risk but the individual giving advice may be sued.)

Does the business need dividing amongst the partners?

If yes

It is usual for a proportion of the business to be divided amongst certain individuals or partners in the event of future sale. It is easier with a limited company as shares can be allocated.

Do you want to raise new finance?

If yes

Loans can be made to the business but may have to be personally guaranteed if a limited company not a partnership. Partners can use their own money or borrow - see Guide No. 5 "Raising Money For Your Business."

Do you want to incentivise staff with a stake in the business?

If yes

A partnership has only profit to distribute. (A company can distribute value to employees through shares, eg, with a share option or share save scheme.)

Is the partnership large, with its management undertaken by a few key individuals?

If yes

The remaining partners may object to carrying unlimited liability without active participation.

What if a partner wants to leave and start up in competition?

This can be difficult to stop (restraint of trade). Partnership agreement could (and should) cover this issue and prescribe reasonable recompense in case of clients following the partner moving away.

What if a partner retires or dies?

Though rare, the partnership agreement could allow some profits to continue to be paid to the retiree or widow/widower. The agreement should cover the eventuality of replacing partners.

Limited company

Are you currently a sole trader or partnership?

If yes

Take professional advice to avoid Capital Gains Tax liability when you later want to sell the business eg, on retirement.

Is your turnover less than £1,000,000 p.a.?

If yes

There is no need for annual audited accounts. This represents a significant saving for a small business.

Do you want to make loans to directors?

If yes

Subject to certain exceptions, limited companies cannot do this. Partnerships can make loans.

Do you want to distribute profits to owner-directors?

If yes

Consider giving share dividends as these may be more tax efficient than individual bonuses.

Have you reviewed your company memorandum and articles of association?

If no

They need to anticipate problems eg, shareholders or directors leaving, selling or dying. The standard form in the Companies Act 1985 is designed to protect external investors. It may not be suitable for businesses where shareholders are also directors.

Do you want to change your articles of association?

If yes

This needs a special resolution which can be blocked by over 25% of shareholders. Far better to get them right first time when the company is formed.

Structuring your business

There are several ways to structure your business. Although many businesses start as sole traders, they often end up either as a partnership or a private limited company, or sometimes, a public limited company (a 'plc').

The choice of structure, or changing a structure, needs careful consideration. It certainly depends on much more than just size or a possible tax saving.

Your decision will affect how the business develops, for example, the ease with which you can attract an outside investor. The structure you choose for your business will determine how easily you can sell the business (or your stake in it) or

leave it to your family or others. It can also seriously affect the tax consequences of any transfer.

Timing is often crucial, and the right moment will depend on your long-term intentions. It makes sense to review the pros and cons regularly.

Although an accountant will be a key advisor, you should also consult your solicitor. The formation of a partnership or a limited company rests on important legal documents, which need to reflect accurately what you want to achieve, now and in the future. Transfer of an existing business to a new structure needs particular care. Resist using standard or "off the shelf" documents when undertaking a transfer as they can often be inferior and unable to safeguard your interests.

Checklist

- Do you need to protect your personal assets from unpredictable liabilities eg, being sued by a client?
- Do you need to be able to distribute profits to working principals?
- Do you want your children (or member of family or others) to inherit your share of the business?
- Do you need to be able to raise outside capital (eg, to develop the business)?
- Is your partnership agreement or, if a limited company, articles of association, meeting the needs of you and your business?
- Do you want to give or sell key staff a stake in the business?
- Do you know what will be the effect on the business if a shareholder/director/partner dies unexpectedly?

Lawyers for your business (LFYB)

Lawyers For Your Business (LFYB) represents around 1200 firms of solicitors in England and Wales, which have come together to help ensure that all businesses, and especially the smaller owner-managed ones, get access to sound legal advice whenever they need it.

LFYB is managed and promoted by The Law Society and has been welcomed as a positive initiative by the Department of Trade and Industry, Chamber of Commerce, the Federation of Small Businesses and many other agencies and trade associations that are active in the small and medium sized business market.

LFYB recognises that, for fear of running up large legal bills, a business will often not consult a solicitor until they have a serious problem. By then, of course, any remedy may be at its most expensive, if indeed one is still available.

In most cases businesses can save themselves money by seeing a solicitor for advice early on, especially where there is legislation to be complied with, or important legal documents such as contracts to be prepared. To remove the risk of incurring unexpectedly high legal costs, LFYB members offer a free consultation, lasting at least half an hour, to diagnose the problem and any need for action, with full information, in advance, on the likely costs of proceeding.

How to gain your free half hour consultation

If you would like to use the service, contact LFYB by post or phone on the details listed below. A list of participating solicitors in your area will be sent to you. Simply choose one of the firms on the list and arrange an appointment. You should mention the LFYB scheme when making contact.

Further information

For further information write to:

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