



## Sole trader or partnership

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

If yes .....

Consider forming a partnership, a limited liability partnership or indeed a limited company.

**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, for example with a share option scheme.

**Do you want to raise new finance?**

If yes .....

Loans can be made to the business but may have to be personally guaranteed if you are trading as a limited company. Partners can use their own money or borrow - see the Law Society's guide to *Raising money for your business*.

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

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

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

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

**In the event of a sale does the business need dividing amongst the partners?**

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.

## Limited liability partnership (LLP)

**Do you have more than one partner?**

If yes.....

Consider converting to an LLP.

**Are you in partnership and does your business involve the risk of major liability?**

**For example are you solicitors, accountants, architects, etc...**

If yes.....

Consider converting to an LLP as you will gain protection - their main purpose is to limit liability for both contractual and tortious claims.

**Are you a partnership and don't want to be subjected to PAYE, etc...**

If yes.....

Consider LLP conversion as they are taxed in a similar way to partnerships.

## 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., and the gross assets on the company's balance sheet no more than £1.4 million?**

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 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, a limited liability 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.

# Structuring your business



The Law Society

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 1,000 firms of solicitors in England and Wales which have come together to help ensure that all businesses, and especially the small to medium sized 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 for Business, Enterprise and Regulatory Reform, 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.

We recognise 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

For a list of solicitors in your area who are Lawyers For Your Business members

call: 020 7405 9075

e-mail: [lfyb@lawsociety.org.uk](mailto:lfyb@lawsociety.org.uk)

visit: [www.lawsociety.org.uk/lfyb](http://www.lawsociety.org.uk/lfyb)

or write to us at:

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