



SETTING UP A NEW BUSINESS

Avonside
63 High Street
Tewkesbury
Gloucestershire GL20 5BJ
(t) 01684 850750
(f) 01684 297717

Elizabeth Hall
13 The Southend
Ledbury
Herefordshire HR8 2EY
(t) 01531 633222
(f) 01531 631666

www.dflegal.com

Ideally, you should always focus on what your priorities and understandings are when setting up a new business

It's important to look at the business as a whole to get the core pieces correct as well as assess what will be the practical solution if things go wrong. One size does not fit all. It is important to get this right at the start. DF Legal LLP will provide clear advice on the types of legal vehicle that will be suitable for your business as well as drafting tailor made supporting documentation such as shareholders' agreement or partnership arrangements.

The structure of your business will be vital to its success as you start up and expand. Business Structures fall into 4 Many Categories: Sole Traders, Partnerships, limited liability partnership and limited companies

Sole Traders

Sole traders are individuals who trade under their own name and as such are personally liable for any debts and claims against the business as a knowledgeable and firm DF Legal can advise on the financial, licensing and insurance implications of running a business as a sole trader.

Partnerships

A partnership is an arrangement between two or more persons carrying on business with a view to profit. Partnerships can be loose arrangements or the terms can be in a written agreement known as a Partnership Agreement.

Regardless of whether such a written agreement exists, if the arrangement is clearly a partnership then the business and actions of each partner are controlled by the Partnership Act 1890

All partnerships to consider (or reconsider) drafting a Partnership Agreement because the Partnership Act was designed as a fall back for a range of different sized and types of partnerships and the rules it imposes are not often helpful in a partnerships specific circumstances. It is much clearer to put the rules you have agreed upon into a document that specifically sets out the duties and responsibilities that you and your partners must follow

What can a Partnership Agreement do for your business?

It allows you to structure your business relationship in a way specific to your circumstances.

It allows you to change how profits (or losses) of each partner are shared and how these are drawn or taken by each partner. The default position is equal shares. It allows you to define the duties of each partner, without an agreement any partner can bind the partnership without consultation or agreement with the other partners. It allows you to govern what will happen to the business if a partner wishes to leave. The Partnership Act allows partners of business to leave relatively easily which could

lead to you picking up the pieces. It allows you to govern how disputes are resolved should you and your partners become deadlocked.

Limited Liability Partnerships

Business which involve the risk of major liability such as accountants architects etc should consider converting to an LLP as they will gain protection for both contractual and tortious claims by limiting their liability in a similar way to that of a Limited Company. The advantage to LLP is that they are comparable to a partnership in terms of structure and tax.

Limited companies

A limited company is a distinct legal entity that is registered at Companies House. The entity is owned by its members or shareholders. A limited liability company has the advantage of providing limited liability to its members, although the company itself will remain fully liable for its debts.

Limited companies require at least one Director who will control the day to day running of the company. Directors owe a number of duties to the company including to act in good faith and to promote the success of the company for the benefit of its members. However as with partnerships if there are two or more shareholders the members of the company may want to consider drafting a shareholder agreement which will govern how they treat each other.

For example you may want to consider the parties' different interests and whether they will be reflected in separate classes of shares or right to preferential dividends

What should happen if someone wants to sell their share of the business and how disputes are going to be resolved? The agreement could also contain protection for minority shareholders and require unanimous consent for some or all of the following winding up the company, changing the nature of the business, borrow monies generally or over agreed limits; give any guarantee or indemnity; incur capital expenditure over agreed limit; engage or dismiss any employee; make distribution or pay dividend or depart from agreed budgets and plans.

Tax issues

Tax treatment will also be a consideration when deciding which type of entity is appropriate for the business for example: Sole traders are taxed on the income and capital gains of the business Partners in a firm or LLP will be taxed on their share of the income and capital gains of the business Limited companies are subject to corporation tax on income and capital profits

Next Stage....

Should you require any further information or seek to instruct us, please do not hesitate to contact John Daniels at **jdaniels@dflegal.com** or on 01684 850750

Please note:

This guide contains information on current legal issues at the time of printing. There may be subsequent changes to which has not been incorporated in this Guide. Please note that this information is supplied as a guide only and therefore its contents should not be applied to any particulars or relied on without legal or other professional advise.