

7 LEGAL ASPECTS OF RUNNING A BUSINESS

If you are planning to set up your own business — or it's already underway — it means you are one of the UK's 5.2 million entrepreneurs. While being an entrepreneur means accepting that running a business involves some risk, it makes sense to be aware at the outset of what you may face.

This guide looks at some of the legal risk areas when starting and running a business, and provides tips on how to deal with them. Ideally these will be considered before you start your business, but you should continue to monitor them as the business grows.

1. LEGAL STRUCTURES AND LIABILITY

There are a number of different legal structures available for your business. Which one is best for you will depend on balancing a number of factors, such as tax, ease of administration, confidentiality of business information. However another important area is liability to third parties, such as customers or creditors.

Sole trader

As a sole trader you yourself are the business. Your own personal assets are on the line: personal savings, your house and car. If someone brings a claim against the business then they can sue you personally (for instance, if you haven't paid a bill). While this is the simplest (and most common) way to start a business, it has the potential to be quite risky.

Partnership

If you own a business with someone else, you are in a legal partnership. Partners have unlimited personal liability, as with sole traders, so personal assets can be at risk. Each partner shares the liability and financial risks of the business.

Any one of the partners can be sued by a third party and each partner is liable for the whole loss (although they could claim a contribution from other partners). So if one partner makes a mistake causing someone a financial loss, that person can sue a different partner for the whole amount (even if they were not involved). So if you have savings but your partner does not, it could be that you will face the claim.

To address that risk, you can set up a limited liability partnership. Under an LLP, each individual partner's liability is limited to the amount they invest.

Limited company

With a limited company, the liability of the owners of the company (the shareholders) is limited to the amount they invested in buying the shares. Someone who wants to sue the business has to sue the

company: it has a separate legal personality from the owners and directors. So your personal assets such as your home and personal savings are protected.

This protection comes at a cost, however: a limited company must file accounts and returns with Companies House. Certain decisions will require the approval of the board of directors or shareholders, and so you should keep a record of all decisions — even if you are a sole shareholder or director.

2. TAKING ON EMPLOYEES

There are some essentials to consider when you start hiring employees.

Contracts

It is important to have proper employment contracts. This gives certainty to the arrangement between you and the employee. If you don't have this certainty, then you open yourself up to disputes with your employee about what their rights and obligations are.

The contract will set out an employee's employment conditions and rights (salary, holiday entitlement, benefits), and their responsibilities and duties (working hours and role). It can also help when an employee leaves (either voluntarily or if you dismiss them): you can follow the terms of the contract regarding the process to follow.

If you buy another business and take on its staff, you will usually need to keep their existing terms and conditions of employment.

Staff handbook

As your team of employees grows, you could consider having a 'staff handbook'. These do not form part of the employment contract, but set out what is expected of staff, as well as what they are entitled to as an employee of the business. The handbook should include any disciplinary/dismissal process.

Employee checks

As well as obtaining references for potential employees, it is important to carry out appropriate checks on them. There is a severe penalty for employers who employ someone who does not have the right to work in the UK. You might be surprised: you could be fined up to £20,000 or even sent to prison.

Insurance and pensions

If you employ staff – even just one person - it is a legal requirement to take out employer's liability insurance. This covers you if you are sued by an employee, for instance if they are injured while at work. You should also check if you need to arrange a pension for your staff: if they are older than 21 and earn above a certain minimum, then you will probably be obliged to do so.

3. YOUR PREMISES

Whether you are buying or renting your business premises, there are a few things to consider. Is your business different from the previous business use of the premises, for instance if you will be running a shop in what was previously an office building? If so, you may need to apply to the local authority for formal 'change of use' permission. Also, if you're running a guest house, hotel or residential nursing home, you may need a fire certificate.

As the business owner, you are responsible for the effect your business has on the health and safety of your employees and members of the public. You may need to train your staff to ensure a safe working environment and minimise the risk of an accident or injury (and reduce the chance of a claim against you).

4. TERMS & CONDITIONS

For almost all businesses, it makes sense to have contract terms and conditions that govern the relationship between the business and its customers. Certain conditions are implied by law into every sale contract, e.g. goods must be of satisfactory quality. But you can manage your responsibilities and liability to customers, and protect the business, by trading on your own terms and conditions.

You can specify terms to your advantage, such as deadlines for payment, the right to charge interest on overdue sums, etc. You can also set out what risks the customer takes on themselves and that you are not responsible for, for instance the colour of a product not being an exact match for an online photo. Or you could state that you are not responsible for any financial loss the customer suffers through using the product, or at least putting a cap on your liability.

5. INTELLECTUAL PROPERTY: COPYRIGHT, TRADE MARKS AND PATENTS

Intellectual property refers to copyright, business names, patents and inventions. You can protect your own company name and logo, along with any inventions, product designs or copyrights. This means you can stop other people using and profiting from them. So no-one can set up a shop in their local High Street with the name and branding of the Harrods store in Knightsbridge: the company behind Harrods (Harrods Ltd) owns the copyright in the logo, styling, etc.

The way to protect your intellectual property is to register it, where possible. This gives you the exclusive right to make, use or sell the invention, design, etc. Once you have your protection it will be much easier to stop someone else using your invention or design – you can take them to court on the basis that it is registered to you.

- Patents: the rights in a unique invention. These are registered at the Patent Office.
- Trade marks: the rights in the name of an invention, the name of your company, or the name of a product. These are registered at the Intellectual Property Office.

- Copyright: the right to copy, publish or perform a work (pictures, stories, music). You get copyright protection automatically, as soon as you have created it. There is no register of copyright works (in the UK). You can protect yourself and prove copyright by sending it to yourself, e.g. by email, which proves you had it on a certain date.

6. LICENCES

You should check if your business requires a licence to operate. The most obvious ones are businesses involving selling alcohol or tobacco, and gambling. So pubs and clubs need licences, as do betting shops and casinos.

However a licence is also required to run a hotel or a guesthouse, a mobile shop or hairdressers. You also need a licence to run a prize draw to raise money for a cause, and to be driving instructor or HGV driver. Licences can be temporary, for instance if you are running only a few events each year where alcohol is on sale.

7. HANDLING PERSONAL INFORMATION

Every business is likely to store or use personal information, and must therefore follow the data protection rules. This applies to information kept on staff, customers and account holders, e.g. recruiting staff, managing personnel files, marketing your products or services, keeping customer addresses on file.

'Personal information' is anything that enables you to identify an individual, such as name or email address. If you misuse personal data you could be fined or have to pay compensation.

The information you keep must be secure, and be accurate and up to date. When you collect someone's personal data you must tell them who you are and how you'll use their information, including if it's being shared with other organisations. You also have to tell them that they have the right to see any information you hold about them and correct the information if it's wrong, and also request their data is deleted or not used for certain purposes. You can do this in your terms and conditions of sale.

This Guide is for reference purposes only, and does not provide advice for any particular set of circumstances.

For further information, and to discuss your situation with no obligation, please contact us:

info@feakes-legal.com

Tel: 01291 639280

www.feakes-legal.com