

BUSINESS START UPS

KEY LEGAL
MATTERS
YOU
SHOULD
CONSIDER



Starting your own business can be exciting. You have an idea, a plan and hopefully the motivation to turn that idea into a successful venture.

But before you start trading, taking orders or signing contracts, there are a number of legal matters you should think about.

Getting the legal foundations right at the beginning can save you considerable time, money and stress later. It can also help protect you, your business, your customers and any employees you may take on.

This guide looks at some of the key legal considerations for anyone starting a new business for the first time.

1.

Choose the right business structure

One of the first decisions you will need to make is how your business will be legally structured.

The main options are:

- Sole trader
- Private limited company
- Partnership or a Limited Liability Partnership (LLP)

The structure you choose can affect your tax position, personal liability, administration and the way your business is ultimately owned and operated.

It is sensible to take accountancy advice before choosing which structure might be best for you.

Sole Trader

Being a sole trader is generally the simplest way to start a business.

You are self-employed and the business is not legally separate from you.

However, an important consideration is personal liability.

A sole trader generally has unlimited liability, meaning you can be personally responsible for the debts and liabilities of the business.

Partnership/ Limited Liability Partnership

If you will be setting up a business with other people (so you are not a sole trader) you might wish to explore a formal partnership arrangement. These are popular in family run businesses.

A limited liability partnership is similar to a limited company where the business is registered at Companies House and the partners enjoy the benefits of limited liability as shareholders of limited companies.

Limited Company

A limited company is a separate legal entity from its owners.

This can provide a degree of protection for you (the shareholders) because their liability is generally limited to their investment in the company.

However, incorporation also brings additional legal and administrative responsibilities.

Directors have legal duties and are responsible for matters including company records, accounts, tax and information filed with Companies House.

You can start your business as a sole trader and if it is successful and grows a little larger than you may have first anticipated, you can always transfer your business into a limited company.

2.

Register your business and understand your ongoing obligations

If you decide to operate through a limited company, you will need to register it with Companies House before trading. You will also need to register with HMRC and you may wish to register for VAT as well.

We would recommend choosing an accountant to help you set up your limited company and register the business with the authorities. Your accountant will then assist you each year with the filing accounts and tax returns.

3. Choose and protect your business name

Before investing money in branding, signage, packaging, websites and marketing, check that the name you want to use is actually available.

You should consider:

- Whether another company already has the same or a confusingly similar name
- Whether the name could infringe someone else's trade mark
- Whether the relevant website domain is available
- Whether suitable social media handles are available
- Whether your proposed company name complies with the applicable rules

It may also be worth considering registering your brand as a trade mark, or to keep this in mind to do later as your business grows.

If your business is going to invest heavily in its brand, obtaining specialist intellectual-property advice early can be worthwhile.

4.

Put Proper Contracts into Place

A common mistake made by new businesses is relying on informal conversations, emails or verbal agreements.

Contracts are important because they establish what each party has agreed to do and what happens if something goes wrong.

Depending on your business, you may need contracts or terms covering:

- Customers and clients
- Suppliers
- Freelancers and contractors
- Employees
- Business partners
- Distributors
- Agents
- Website users



Your customer terms should clearly explain matters such as:

- What you are providing
- Price and payment terms
- Delivery arrangements
- Cancellation rights
- Refunds
- Warranties
- Liability
- Intellectual property
- Confidentiality
- How disputes will be handled

Do not simply copy another company's terms and conditions. They may not be suitable for your business and could contain provisions that do not work for your particular circumstances.

5. **Employment Law**

If you intend to employ people, employment law becomes a major consideration.

Before your first employee starts, you should consider matters including:

- Written employment particulars
- Pay and National Minimum Wage requirements
- Working hours
- Holiday entitlement
- Statutory leave
- Pension auto-enrolment
- Sick pay
- Discrimination law
- Disciplinary procedures
- Grievance procedures
- Dismissal
- Redundancy
- Health and safety
- Right-to-work checks

ACAS provide a lot of information on their website or a specialist HR agency can help you get all of these important elements in place for you.

6 ■ **Protect Personal Data**

Almost every modern business handles personal information.

You might collect:

- Customer names
- Email addresses
- Telephone numbers
- Addresses
- Payment information
- Employee information
- Website analytics
- Marketing preferences

Data protection law can therefore apply to businesses of all sizes, including sole traders and very small businesses.

You should consider matters such as:

- What personal data you collect
- Why you collect it
- Whether you have a lawful basis for processing it
- How you keep it secure
- How long you retain it
- Who you share it with
- How people can exercise their rights
- Whether you need to pay the relevant data protection fee
- Whether you need a privacy notice
- Whether you have appropriate agreements with suppliers processing data for you

The Information Commissioner's Office website has a lot of helpful guidance relating to data protection or you should seek specialist advice for further assistance.

7. **Licences**

Check whether your business needs a licence.

Some businesses can start trading relatively easily. Others require specific licences, registrations, permissions or approvals.

Examples can include businesses involved in:

- Food
 - Alcohol
 - Financial services
 - Childcare
 - Hospitality
 - Construction
 - Waste
 - Certain professional services
 - Activities involving regulated products
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8 ■ **Consider Business Insurance**

Insurance does not replace good legal contracts, but it can provide an important layer of protection.

Depending on your business, you may need or want to consider:

- Public liability insurance
- Professional indemnity insurance
- Employers' liability insurance
- Product liability insurance
- Business interruption insurance
- Cyber insurance
- Commercial property insurance

Some insurance is legally required in particular circumstances. For example, employers will generally need employers' liability insurance.

The appropriate insurance will depend heavily on what your business does, where it operates and the risks involved. An insurance broker specialising in business insurance will be able to guide you through the right types of insurances which you need for your new business before you start trading.

9. **Understand health and safety responsibilities**

Health and safety is not only relevant to large companies. Health and safety law generally applies to businesses regardless of their size, with employers and self-employed people having responsibilities for managing workplace risks.

Depending on your business, you may need to consider:

- Risk assessments
- Workplace safety
- Equipment safety
- Fire safety
- Staff training
- Personal protective equipment
- Accident reporting
- Manual handling
- Lone working
- Working from home
- Risks to members of the public



The requirements will vary considerably depending on the nature of your activities. A health and safety consultancy firm will be able to advise you on the requirements for your particular business type and industry.

10. **If you have business partners, agree what happens if things go wrong**

Starting a business with a friend, family member or business partner can be exciting, but it is important to discuss difficult scenarios before they happen.

Consider what would happen if:

- One partner wants to leave
- One partner stops contributing
- The business needs more money
- Someone becomes ill
- One partner dies
- The partners disagree
- One person wants to sell their interest
- A new investor wants to join
- The business becomes insolvent



For companies with multiple shareholders, a shareholders' agreement can be particularly useful. For a partnership or a limited liability partnership, a partnership agreement is essential.

It can establish how important decisions are made and what happens in situations such as a shareholder wanting to sell their shares or a serious disagreement between owners.

It is usually much easier to agree these matters when everyone is getting along than when a dispute has already arisen.

These types of agreements should be in place even with family run businesses.

11. Think about your premises

If you are renting an office, shop, warehouse, workshop or other commercial premises, do not treat the lease as just another document to sign.

Commercial leases can contain significant obligations relating to:

- Rent
- Service charges
- Repairs
- Insurance
- Alterations
- Permitted use
- Assignment or subletting
- Break clauses
- Dilapidations
- Business rates

You should also check that the premises can legally be used for the activities you intend to carry out. Taking legal advice before signing a long-term commercial lease can be considerably cheaper than discovering later that the premises do not meet your needs.

12. **Ensure your website is compliant**

Make sure your website complies with the law. Your website is often one of the first places customers interact with your business. Depending on your activities, you may need appropriate:

- Business identification information
- Terms and conditions
- Privacy notice
- Cookie information
- Consumer information
- Refund and cancellation information
- Marketing consent mechanisms
- Intellectual-property notices

If you collect customer information or use analytics, advertising or tracking technologies, data protection and electronic marketing rules may also be relevant.

Your website should be treated as part of your legal and commercial infrastructure, rather than simply a marketing tool.

13. **Keep Proper Business Records**

Good record-keeping is not simply an accountant's preference. Depending on your business structure and activities, you may need to maintain records relating to:

- Sales
- Expenses
- Tax
- Employees
- Contracts
- Company decisions
- Customers
- Personal data
- Insurance
- Health and safety
- Intellectual property
- Company filings

For limited companies, directors have specific obligations concerning company and accounting records, accounts and information filed with Companies House.

Good records also make it much easier to understand whether the business is actually making money. There are lots of affordable software packages which have been purchased to assist you keeping a data trail of all these important pieces of data and to do so in a safe and secure way.

14. **Don't ignore insolvency and cash-flow issues**

A business can be profitable on paper and still run out of cash.

As your business grows, you should monitor:

- Cash flow
- Outstanding invoices
- Supplier debts
- Tax liabilities
- Loan repayments
- Payroll
- Credit arrangements

If your business begins experiencing serious financial difficulties, do not simply hope that the problem will resolve itself.

Directors of limited companies have particular responsibilities when a company is in financial difficulty, and continuing to trade or take certain actions when a company is insolvent can create serious legal consequences.

Early professional advice can make a significant difference.

Summary

Here is a summary of the key points to consider before launching your new business:

- ✓ • Chosen the appropriate business structure
- ✓ • Registered with the appropriate authorities
- ✓ • Checked and protected your business name and brand
- ✓ • Set up appropriate contracts and terms
- ✓ • Understood your tax obligations
- ✓ • Set up appropriate bookkeeping and record-keeping
- ✓ • Checked whether licences or permissions are required
- ✓ • Considered appropriate business insurance
- ✓ • Addressed data protection requirements
- ✓ • Addressed employment obligations if hiring staff
- ✓ • Considered health and safety
- ✓ • Considered commercial premises obligations
- ✓ • Agreed arrangements with business partners
- ✓ • Obtained professional advice where necessary

Final Thoughts...

The legal foundations you put in place at the beginning can have a significant impact on your business as it grows. A well-drafted contract, properly structured business, protected brand, compliant employment arrangements and sensible approach to data protection can all help reduce the risk of expensive problems later.

You do not necessarily need a solicitor involved in every decision. Many routine administrative matters can be handled directly by business owners, accountants or specialist providers.

However, there are certain points where professional legal advice can be particularly valuable — especially when setting up a company with multiple owners, entering significant contracts, employing staff, taking on commercial premises, protecting valuable intellectual property, dealing with regulated activities or experiencing a dispute.

The best time to think about legal risk is before it becomes a problem. If you are starting a new UK business, taking a little time to understand your legal responsibilities at the outset can give you greater confidence to focus on what matters most: building and growing the business.

Contact Us

To see how Jordans Solicitors can help your business please contact us for further information on

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