

Starting in Business Information Pack

Introduction

Many people want to start a business or may have already set up a business without really investigating the correct or 'legal' way of carrying on as a commercial entity.

There are many considerations that need to be addressed before a company, partnership, limited liability partnership or sole trader can run effectively.

This pack is designed to raise some questions that you may not know the answers to or that you did not realise affected your business or that you did not think of asking.

The information included in this pack has been prepared for the interest of our clients and prospective clients but is not a substitute for advice on any of these specific issues.

The information contained in this leaflet is as follows: -

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(A) What Form Should your Business Take?

Introduction

Many people want to start a business or may have already set up a business without really appreciating the different structures within which a business can be carried on or the legal implications of each business format.

There are a number of considerations to be addressed before a limited company, a partnership, a limited liability partnership or a sole trader can trade. All are different and there are advantages and disadvantages attached to each.

This leaflet is designed to briefly explore the legal requirements of each of the above formats and explain the differences. Taxation issues in respect of running your business will not be considered and you should take specialist accountancy advice in respect of such issues. We would be pleased to refer you to a suitable professional if required.

Sole Trader

You can commence business as a sole trader with the minimum of fuss. There is no specific law which governs the setting up of business as a sole trader, but a sole trader must adhere to general contractual and tax law.

A sole trader will trade in his or her own name and typically a business name is used (e.g. Mr John Smith trading as '*name of business*'). A sole trader is personally liable in respect of all contracts, liabilities and debts of the business. A sole trader is taxed in his or her own name.

Partnership

A partnership exists where two or more persons carry on a business in common with a view to a profit. It is sometimes the case, therefore, that a partnership may exist even if the parties do not consider that there is a partnership. Partnerships are governed by a law dating back to the 19th century, namely the Partnership Act 1890 (Partnership Act).

Partners have unlimited liability and all partners are liable for the debts of the partnership. One partner can enter into contracts on behalf of all the other partners. Each partner is taxed on his own earnings/profit share.

The Partnership Act specifies default provisions which will apply to partnerships where no specific agreement to the contrary is made between the partners. The main default provisions relate to the sharing of profits and losses of the business equally between the partners. Also the partnership can be dissolved at any time if a partner leaves or dies or by giving notice (which can be verbal).

As you can well imagine, the provisions of the Partnership Act are quite outdated and do not take account of the nuances of running and managing a business in the 21st century. There are no provisions which deal with disputes or exit routes for the partners or allowing for the expulsion of a partner.

We would recommend that a partnership agreement is entered into between the partners at the start of the relationship to avoid the default provisions applying.

Limited Liability Partnership ('LLPs')

An LLP can best be described as a hybrid between a partnership and a limited company. An LLP is a separate legal entity which can enter into contracts in its own name and is separate from its members. Members have limited liability (as the name would suggest). The owners and managers of an LLP are the same individuals. However, the members are taxed on their share of the profits, in the same way as a partnership.

To form an LLP, registration forms must be completed and a fee paid to Companies House. Each LLP, once registered, has its own unique registration number at Companies House. An LLP does not exist until an incorporation certificate is issued. An LLP must comply with ongoing filing requirements at Companies House, such as the obligation to inform Companies House of any changes to the members and it must file annual accounts and an annual return.

Members are subject to the same liabilities and duties as company directors. An LLP must also comply to a large extent to company law. This is the quid pro quo of the members enjoying limited liability.

The existence of an LLP will continue even if the members change. However, there must always be a minimum of two members, otherwise limited liability status will be lost after a period of time.

We would recommend, similarly to a partnership, that the members enter into an agreement to regulate their relationship as there is no statutory constitution which specifies how the internal affairs of the LLP should be managed. In the absence of an agreement between members, statutory provisions, which are not extensive, will apply in default.

Limited Company

A company limited by shares has its own legal personality and can sue or be sued in its own right. A Company is managed on a day to day basis by its directors and is owned by its shareholders. The liability of the shareholders is limited to the extent of the shares which they hold and for which they have paid. Directors are not held personally liable for breaches by the company, except in certain limited circumstances which are described in our section on the role and duties of a company director.

A company only comes into being when a certificate of incorporation is issued by Companies House after submission of an application form and a fee. A company must have at least one director. Private companies are no longer required to have a company secretary although it can

do if it so wishes. However, having a company secretary remains mandatory for public companies. A Company must have at least one shareholder who must hold at least one share.

A company must comply with company law and keep its filings up to date at Companies House. A company is governed (in addition to company law) by its articles of association which set out what the company can do and how its internal affairs must be managed. Its memorandum of association confirms that the subscribers wish to form the Company.

A company is taxed on its own profits (corporation tax). Any profits to be paid to the shareholders are paid by way of dividend declared on the number of shares held by a shareholder. The payment of dividends is subject to income tax by the receiving shareholder. Directors are usually employees of the company and must account for income tax on their remuneration.

(B) Choosing a Name for your Business

Whether you decide to trade as a limited company, a limited liability partnership, a partnership or as a sole trader, one of the first things you will do is choose a name for your business. Often the name you choose will give a flavour of what the nature of your business is or it will indicate the geographic location where it will be based.

Once committed to a name, a business will typically spend a good deal of time and money marketing the business under its chosen name, designing a website using the name, printing business stationery and brochures bearing the name and placing advertisements. Indeed, much of new business' initial efforts will be directed to building a goodwill and reputation in its chosen field and much of that goodwill and reputation will be focussed around the name of the business.

The name is therefore an important ingredient in the success of your business. It is important, not only that you do everything you can to protect your chosen name, but also that you take care to choose a name which is not going to conflict with a name which another business already has, otherwise there is a serious danger that you could be forced to change your name.

Limited Companies and Limited Liability Partnerships

The legislation governing both the formation of limited companies and limited liability partnerships (LLPs) places certain restrictions on what your limited company or LLP may be called. For example, it is generally not possible to register a company or a LLP that would be likely to give the impression that the company or LLP is connected in any way with the government or with a local authority. Certain words cannot be used at all and others, only with prior written consent of a regulatory body.

Similarly, it is not possible to register a name which is already taken. Therefore two companies called XYZ Limited cannot exist at the same time. Objection may also be taken where an attempt is made to register a company or a LLP which is too similar to a name already used by another limited company or LLP. It is not possible to reserve the name of a limited company or LLP in advance but a check can be made to see if the name is already taken prior to incorporation.

Names already registered as trade marks

Company names and trading names are often registered as trade marks in relation to specific goods and services. The registration of a trade mark gives the owner of the trade mark the exclusive right to use that name in relation to the goods and services for which it is registered. In certain circumstances the owner of a trade mark may also be able to prevent the use of the name, or a similar name, in relation to similar or even different goods or services.

It is therefore important when choosing a new name for your business to conduct a search of the trade mark register to ensure that there are no registrations for your chosen name (or similar

names) nor that there are any registrations for your chosen name or similar names in relation to the same or similar goods or services in which you are proposing to trade. Use of a name which is too close to someone else's trade mark may well mean that you need to change your business name before your business is truly up and running.

Names already in use

As well as registered trade marks, names which have been in use for a period of time may also attract rights. These rights can be used to prevent the continued use of an identical or similar name in the same or similar field of business. For example, a business which has been trading as XYZ for a period of years is likely to be able to stop a new business trading under the name XYZ Limited in the same field of business.

It is impossible to undertake a complete search for the unregistered rights of third parties. However checks made of business directories, trade associations, local chamber of commerce etc can be a useful starting point.

Protection through registration as a trade mark

Registering your name as a limited company or a LLP may not provide you with the right to trade under that name. Consideration should therefore be given to applying for a trade mark for your company name, the name of your LLP or your trading name, which will provide you with the exclusive right to use the name for your chosen goods or services.

Not all names can be registered as trade marks and there may be particular difficulties if the chosen trade mark is seen to be too descriptive of your business or if it conflicts with earlier rights. The name of your business is however potentially one of the business' most valuable assets and serious thought should be given to securing this asset with a trade mark registration.

Protection through use

As soon as you start to use your business name then that name will attract goodwill and reputation. Ultimately, your business name may come to be associated with the type and quality of the goods and services which your business provides and you will be able to prevent other similar businesses using the same or similar name.

The best way to protect this goodwill and reputation is through a trade mark registration. If, however, for some reason a trade mark registration is not possible then you should take some basic steps to ensure that you maximise the goodwill and reputation in your business name. These steps will include:-

- Attempting to differentiate the name in some way from the rest of the text around it i.e. by the use of quotation marks.
- Always using the name as an adjective and not as a noun or an adverb. For example "an XYZ Product or Service" and not "an XYZ" or "XYZs" or "to XYZ";
- Always try to use the name in the same form. Do not be tempted to change it.

Domain Names

It is increasingly vital for businesses to have an internet presence. It is therefore important that your business secures a domain name which is in some way connected to your business name. This generally means either choosing a domain name which is descriptive of the nature of your business or one which includes all or part of the name you have chosen for your business.

Domain names are allocated on a first come, first served basis and you may therefore find that your first choice domain name is already taken by another business. If registration of a domain name is important you can secure the domain name of your choice at the same time or before you register your name as a limited company or a LLP or before you start to trade. This may influence the choice of your name.

The same care needs to be exercised when choosing a domain name as when choosing the name for your business, as domain names can also infringe the rights of other businesses.

For further information or assistance please contact Nick Phillips in our Intellectual Property team on 01483 748 500 or by email at nickphillips@barlowrobbins.com or through your usual contact at Barlow Robbins LLP.

(C) How Do I Form a Limited Company?

We offer a company formation service to incorporate tailor made companies for you or you can acquire one of our “off the shelf” companies. These are pre-incorporated companies which have not traded which have one class of share and standard commercial articles of association.

To incorporate a company you need to consider the following:-

How many directors do I need?

Each company must have one director. There is no requirement to have a secretary but you can appoint one if you wish.

Details required to appoint directors and secretary.

For each director, you will need to provide his or her name, address, date of birth, nationality and occupation. A service address to which official correspondence can be sent may be nominated by any director. This will be the address to which official correspondence will be sent. Their usual residential address (if different) must be supplied to Companies House, but this will be kept on a separate, secure register which will not be available to the public we can provide a service address for an annual fee.

For the secretary you will need to provide his or her name and address. We have our own company, Barlow Robbins Secretariat Limited, which can act as company secretary if required, for an annual fee.

What details of the shareholders do I need to provide?

You will need to provide their names and addresses, and confirm how many shares are to be issued to each shareholder. The minimum number of shares which can be issued is one. If the Company is to have more than one class of share with different rights attaching to those shares, you will need to let us know.

Do I need a registered address?

Each company must choose an address in England and Wales to be its registered address. We can provide our Guildford address as the registered address, if required, for an annual fee.

What should the company's year-end be?

The accounting reference date is the date in each year by which the company's accounts have to be prepared. Any date can be chosen, however, if no date is given, your accounting reference date will be the last day of the month in which the company was incorporated.

Can I choose any company name that I like?

Yes, but you will need to provide several alternative names in the event that your chosen name is unavailable. Please see our leaflet 'Choosing a Name for your Business' for more guidance relating to company names.

(D) Your Role and Duties as a Company Director

Who owes the duties?

Management of a company's business is vested in its directors. Directors include:

- persons who have been validly appointed as a director in accordance with the Companies Act 2006.
- someone who acts as a director even if his appointment was invalid or where he had not been appointed at all (de facto directors).
- someone in accordance with whose directions or instructions the directors of a company are accustomed to act (shadow directors).

What are the duties?

Directors must act in the best interest of the company at all times. The duties are owed to the company and are set out in the Companies Act 2006 (Act). A director owes the following duties to his company:

- to promote the success of the company for the benefit of its members as a whole;
- to exercise reasonable care, skill and diligence;
- to act within the powers conferred by a company's constitution;
- to exercise independent judgment;
- to avoid conflicts of interest;
- not to accept benefits from third parties;
- to declare an interest in a proposed transaction or arrangement.

The Act sets out a number of factors to which a director must have regard in considering his duties and this list is not intended to be exhaustive. It includes consideration of:

- the likely consequence of any decision in the long term;
- the interest of the company's employees;
- the need to foster the company's business relationships with suppliers, customers and others;
- the impact of the company's operations on the community and the environment;
- the need to act fairly as between members of the company.

These duties have been set out for the first time in an Act of Parliament. Previously, directors duties had been determined by court rulings (common law). It is not clear at present how the statutory duties will be judged, however it is likely they will be interpreted using some of the same legal principals as previous case law. Directors' duties have to be carried out with a degree of skill and care. In carrying out his duties a director must not abuse his position.

In carrying out his duties, a director need not exhibit a greater degree of skill than may be reasonably expected from a person of his knowledge and experience. A greater degree of skill and care is expected from experienced businessmen than amateurs. A director cannot,

however, excuse himself from being involved in the proper management of the company's affairs. This means that each individual director is, for example, responsible for ensuring that the company complies with certain Companies Act requirements for the filing of documents and keeping records.

Directors' Liabilities - the risks

As a general rule directors will have no liability to third parties under common law or for tortious acts done by the company. Personal liability may be incurred as follows:-

Personal Liability

Directors may be liable on contracts made between the company and third parties in the following circumstances:

- if a director is a signatory of a cheque, promissory note or order for money or goods which incorrectly refers to the Company's name
- if a director does not make it clear he is contracting as an agent of the company
- if a director exceeds his authority
- if a director acts as a director before incorporation of the company
- if a director personally guarantees performance

Breach of Statutory Requirements

Liability may also arise under the following statutory provisions:-

- Companies Act 2006. There are a considerable number of duties under the Companies Act which a director must perform or ensure are performed. They include filing documents at Companies House; ensuring accounts and annual returns are prepared and filed, and also maintaining the company's statutory books. Failure to comply can result in officers of the company being responsible to pay default fines and in some cases imprisonment. Persistent failure to comply with the requirements of the Companies Act regulations can result in disqualification of a director.
- Insolvency Act 1986. This act contains provisions to prevent malpractice by directors both before and during liquidation. A director will be liable to make personal contributions to the company's assets where the director has been or is guilty of wrongful or fraudulent trading. This means that a director must not carry on trading where there is no reasonable prospect that the company would avoid going into insolvent liquidation (wrongful trading) or where the company, having gone into insolvent liquidation, knowingly carried on business with intent to defraud creditors (fraudulent trading)
- Financial Services Act 1986. Where an application is made for listing on the Stock Exchange and misleading or untrue statements are made by the directors, any person who has suffered a loss as a result of making an investment can claim compensation from the directors.

Shareholder action

Shareholders may also be able to bring an action in the name of the Company against a director who has done a wrong to the Company. A Shareholder would have to make an application to the Court for permission to bring such an action.

Remedies

If a director fails to perform his duties properly and take appropriate advice, this could result in disqualification from office and personal liability to contribute to the company's debts if it becomes insolvent. The maximum period of disqualification is 15 years. In the case of disqualification for unfitness to act as a director, there is a minimum period of disqualification of 2 years.

A director may be disqualified on the following grounds:

- for persistently failing to file a company's annual returns, accounts and other documents (e.g. copies of special resolutions) with the Registrar of Companies.
- for being unfit to act as a director. A director who has mismanaged a company that has become insolvent can be disqualified for up to 15 years. The court **must** disqualify a person who was a director of a company before it became insolvent if his conduct showed him to be unfit to manage a company.
- if a director has been found guilty of fraudulent or wrongful trading he can also be disqualified for up to 15 years.

If a person manages a company while disqualified for an undischarged bankrupt, he may be made personally responsible for the debts and liabilities of the company which were incurred during that period.

Anyone who acts, or who is willing to act, on instructions from a person whom he knows to be disqualified or an undischarged bankrupt may also be made personally responsible for the company's debts and liabilities incurred while he was acting in this way.

The above goes some way to highlight the obligations and liabilities that face directors today.

With ever-increasing statutory obligations being placed on companies and their officers, the "lot" of the director is not easy. To avoid personal liability and to keep abreast of changes in the laws, you must ensure adequate controls are in place as to how the company is managed and demonstrate this by meeting regularly, minuting discussions and decisions and above all taking appropriate accountancy and legal advice. Resignation from the Board will not absolve you from liability if things start to go wrong.

(E) Your Role and Duties as a Company Secretary (or additional directors' duties)

- Your role is to oversee the administrative running of the company. Your level of activity will largely depend upon the size of your company and how involved the directors are in the administration.
- If the Company has no company secretary, the directors must ensure these functions are carried out, normally be one of their number nominated for such responsibilities.
- Your duties as a secretary will usually be as follows: -
 - **To maintain and update the company's statutory books.**
This involves noting any changes in the registers of members, directors and directors' interests, transfers and allotments and register of charges; writing up the share certificates and obtaining directors' signatures, where required.
 - **To prepare, arrange and keep minutes of all directors' meetings and general meetings of the members.**
The minutes are usually signed by the Chairman of each meeting and kept with the statutory books. Minutes can be formatted in different ways and it will be up to you as secretary to decide the format that suits you and your company.
 - **To file all statutory forms and other documents with the Registrar of Companies.**
The Companies Act 2006 specifies the time periods in which information and documents must be filed at Companies House. Most filing times are within 14 days. You can also sign the annual return and file it at Companies House. You have 28 days within which to file the annual return with the Registrar. All special resolutions and certain ordinary resolutions passed by the company must also be filed with the Registrar. For example, there are prescribed forms for notifying Companies House that a director has resigned or that the company's registered office has changed. If the company is altering its structure or officers, then there will generally be a form to complete and file.

Statutory forms can be obtained free of charge from: Companies House, Crown Way, Cardiff, CF4 3UZ tel: 0870 3333 636 or can be downloaded from www.companies-house.gov.uk

Most forms can be filed electronically at Companies House provided your company is registered for Webfiling. You should contact Companies House for more information.

- **To provide notice of meetings and other documents to those entitled to receive them.**
If you wish to hold an AGM or your articles of association require the Company to hold an AGM, you must give 21 clear days' notice to shareholders and your auditor of an annual general meeting. At least 14 clear days' notice must be given for or other general meetings (or such longer period as the Articles require)

(unless it is a meeting to deal with the removal of a director, where special notice must be given and other statutory requirements must be fulfilled). You must also send copies of the company's accounts to those entitled to them and ensure that the accounts, register of members and minutes are available for inspection by the members, if so required. 'Clear days' means that you must allow at least two posting days for posting time for the notices, in addition to the number of days that have been specified above.

- **Important things to know:**

- You need to hold certain qualifications to be appointed as company secretary of a public limited company.
- As an officer of the company you may be liable to pay a fine for defaults of the company such as failing to file an annual return.
- The company directors have the power to remove you as secretary at any time.

How we can help

Statutory books and company forms are designed to be user friendly. However, should you require assistance in your role as company secretary, then we would be pleased to advise you. This could take the form of appointing Barlow Robbins LLP to provide secretarial services or to act as company secretary through Barlow Robbins Secretariat Limited. Alternatively, we can work with you as company secretary and offer such advice and support services that you may need.

(F) Ongoing Company Information and Legal Requirements

Company Books

You are required at law to maintain statutory records including a Minute Book, Register of Directors and Secretary, Register of Share Transfers etc. which should be kept at the registered office unless you notify Companies House otherwise.

Memorandum and Articles of Association

You must ensure that your company complies with its constitutional documents, its Memorandum and Articles of Association. The Memorandum of Association is an historic document which sets out who the subscribers are. The Articles of Association set out any limits to the powers which a company has and states its objects and limitations of liability (if any). They also set out the internal regulations of the company. If the Company was incorporated before 1 October 2009, the provisions in the Memorandum will automatically be deemed to form part of your Articles from 1 October 2009. The first time you amend your Articles after 1 October 2009 you must incorporate the provisions from your Memorandum into your Articles, to include the fact that the liability of the members is limited or annex a copy of your existing Memorandum to the amended Articles.

Company stationery

When you have set up your business as a limited company, you should be aware that there is certain information you must include on the company's communications by law. This includes all communications made by the company in business letters, notices and official publications, order forms, cheques and orders for money, invoices, all other forms of business correspondence and documentation and on the company's website. It is not necessary for the information to be on every page of the company's website, but it should be in a place where it can be easily read. This information is as follows:

- The full registered name of the company. If you are going to trade under a different name, the full registered name of the company must also be present on the stationery and must include the word "limited".
- The registered office address. Again, if the trading address is different to the registered office address, both must appear.
- The registered number of the company and the fact that the company is registered in England and Wales.
- If you want to include the names of the directors you must include the names of all of the directors or none of them.
- If you disclose your share capital, you must refer to the company's paid up share capital.

Nameplates

The name of the company should be displayed in a prominent place at the registered office, any place at which it keeps its records available for inspection and any location at which it carries on business (except where that location is primarily living accommodation).

Board Meetings

A meeting of directors will be called by the secretary (if any) or a director usually on the instructions of the chairman but can be called by the secretary at the request of any director. It is usual to give formal written notice, but valid meetings can be arranged (subject to any provision to the contrary in the company's Articles of Association) informally if all the directors agree. There is no statutory minimum period of notice, but it must be reasonable and in accordance with the company's practice. Notice of the meeting will normally be accompanied by an agenda, reports, accounts and other documents which are to be discussed at the meeting. Meetings held by telephone or video conference are only valid if permitted by the company's Articles of Association.

Alternatively, a resolution in writing signed by all directors entitled to receive notice of a meeting or a committee of the directors is valid as if it had been passed at a meeting. The above is a resume of obligations and you should check the company's Articles of Association to see if any of the points referred to have been varied.

The directors are required to keep minutes of their meetings and this is the responsibility of the secretary (or if there is none then by the directors). Emphasis should be on recording decisions and key points considered, not general discussion.

Annual General Meetings

A company does not have to hold an Annual General Meeting (AGM) even if the Company's Articles of Association specifically require one to be held.

General Meetings

Any general meeting other than an Annual General Meeting is called a General Meeting (GM). The directors may call a GM whenever they think fit, subject to giving the proper notice. In general, members with one tenth of the fully paid up voting shares may requisition the calling of a GM. The requisition must be deposited at the company's registered office. The request must contain certain information.

On receipt of such a requisition, the directors must proceed to call the GM within 21 days (i.e. send out the notices) to be held within 28 days of the notice convening the meeting. If the directors do not call the GM, those requisitioning may themselves call the meeting to be held within three months.

The period of notice for a GM depends on the business to be conducted. In general, 14 days' notice is required for most resolutions. Some resolutions require longer periods of notice, such as a resolution to remove a director. These notice periods do not include the day of sending the notice or the day of the meeting. The meeting can be held on short notice if this is agreed by a majority in number of the members who hold 90 per cent of the voting shares unless the Articles specify otherwise.

Minutes of all general meetings including AGMs must be kept and copies of all special resolutions and some other resolutions must be sent to the Registrar of Companies.

Company Accounts

For a private limited company, as far as your ongoing requirements are concerned, each company has to prepare accounts annually and these have to be filed with the Registrar of Companies within nine months of your accounting reference date. The requirements to appoint auditors and have your accounts audited have been relaxed and are dependent upon the company's annual turnover. Failure to file within the requisite periods will give rise to an automatic fine.

If a company qualifies as a small company then all you need to prepare and file at Companies House is abbreviated accounts. There are rules establishing whether you are a small company determined by your annual turnover and the number of employees. Certain statutory statements need to be made on such accounts.

Annual Returns

You will be sent a letter from Companies House reminding you to file your company's annual return by a set date. You will need to obtain a paper annual return from Companies House or complete the annual return online via the WebFiling Service. The details held at Companies House must be checked, any amendments made and the form returned to Companies House within the time specified together with payment of the annual fee. The fee for the submission of the annual return in paper form is £30 and £15 where the form is filed electronically.

During the life of the company, any changes to the structure of the company have to be notified to the Registrar on an ongoing basis. Notices must be in writing and there is usually a prescribed form of notice.

Electronic Filing

Companies House offer a WebFiling and Online Filing service, which enables companies to file a number of Companies House forms online.

The number of forms which can be filed online are increasing on an ongoing basis. The main 'standard' documents which can be filed online are the forms to change the company's officers, registered office address and filing the company's Annual Return. If you would like to file an appointment form online, you will need three items of personal information from the director/

secretary who is going to be appointed. This may include: town of birth, telephone number, national insurance number, passport number, mother's maiden name, eye colour and father's first forename. This information is electronic confirmation of the director's consent to act instead of the signature of the director on his appointment form.

To register for this service, you will need to obtain a security and authentication code from the Companies House website at www.companieshouse.co.uk. The security code will be sent to you by e-mail and the authentication code will be sent to the company's registered office address for added security.

(G) How We Can Help You

Every UK company has to comply with a complex array of administrative requirements regarding such matters as the maintenance of statutory records, the filing of accounts and annual returns at Companies House and the holding of board and shareholders' meetings. Some of these requirements also apply to LLPs.

At Barlow Robbins LLP, we appreciate that for busy professionals it is often easy to overlook compliance requirements, particularly if you do not have the benefit of expert in-house experience. This could be a costly mistake.

Failure to comply with the provisions in the Companies Act 2006 relating to company administration can lead to fines for both secretaries and directors and ultimately, following serious breaches in the case of directors, to disqualification. Additionally, if accounts are filed late, automatic fines are levied against the company.

It is very important therefore that you devote time and effort to ensuring that your administrative affairs are in order. We can help you to achieve this.

We can provide a registered office and/or service address for directors (including receipt and forwarding of mail) and can act as company secretary. In addition we can provide a full secretarial service to deal with many of the administrative tasks including:

- Safe custody of statutory books and seal (if any)
- Preparation of year end board and annual general meeting minutes, notices and proxies (if required)
- Preparation and filing of annual returns

Where we provide a full secretarial service, we can also file your Companies House forms online at Companies House.

In addition, we are able to advise upon and deal with all formalities for a change in corporate structure and would be pleased to discuss this with you on request.

Please contact a member of the corporate team for further details of our services and fees.

(H) Setting up in Business

How should my business be structured?

The choice of which forum to adopt to run your business will depend on numerous factors. You can run your business as a sole trader, a partnership, a limited liability partnership or a limited company. We can advise you on which will be most effective for you.

How will taxation affect my business?

The taxes that will be involved will depend on which business form you adopt. In any event, you will need to notify the following government bodies:

- HM Revenue & Customs: For further information regarding self-employment tax status, PAYE or corporation tax contact the National Advise Service Enquiry Line on 0845 010 9000 or write to Dukes Court, Duke Street, Woking, Surrey GU21 5XR. (www.hmrc.gov.uk).

For further information on employment-related securities contact the Employee Share and Securities Unit on 020 7147 2853 or write to Room G52, 100 Parliament Street, London SW1A 2BQ.

- VAT Office
You must register for VAT if your business turnover exceeds the threshold of £68,000 per annum. However, registration may be voluntary if your turnover is less than this amount. For an application form for registration or further information contact the VAT, Customs and Excise Helpline on 0845 010 9000 (www.hmrc.gov.uk).

HM Revenue & Customs (HMRC) will automatically send Form CT41G to your new company following incorporation which requests information about the company and its directors for corporation tax purposes. This must be completed and returned to HMRC. You must also ensure that HMRC is notified within three months of your company commencing to trade. In the event that you fail to notify within this time period a penalty will be payable by the company.

You will also be required to report all shares and options granted over shares issued to individuals who are employees of the company (including subscriber shares) by submitting Form 42 to HMRC. This form is not automatically sent to companies, but can be obtained from HMRC website. Failure to submit this information will result in a penalty being incurred.

Technology and Data Protection

If you hold or intend to hold personal data or become involved in direct marketing in mailings to clients and potential clients on a computer in the course of your business you will need to

register with the Information Commissioner. Penalties for failing to register can include substantial fines so this is an important consideration that should not be overlooked.

For more information, contact the Information Commissioner on 01625 545745 or write to The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Alternatively visit the web site at: www.ico.gov.uk.

What else will I need?

- **Premises:** In setting up or expanding your business you will also need to consider your business premises. You may wish to set up at home, but will need to be aware of restrictions on using dwellings for business purposes. Barlow Robbins LLP' Commercial Property Team can assist you with these issues and advise on all business property considerations.
- **Employees:** If you intend to employ others, you will need to consider the terms of employment your employees will require. The legislation relating to employees can be a minefield and Barlow Robbins LLP can advise you of the statutory rights you have as an employer and the rights of your employees.
- **Terms of Business:** If your business is one which provides goods and services then, again, you will need to consider the terms and conditions upon which you will provide those goods and services. In the course of your business you will probably come across another business' terms and conditions. It is therefore important that you understand how these terms will affect you and the statutory implications of such terms.
- **Other issues:** Depending on what your business is, there may be other relevant points to consider such as insurance, finance and licences. Barlow Robbins LLP can assist you in making sure that all of these considerations and other concerns that you may have are addressed.

(I) About Us and Contacts

Background information about us

Barlow Robbins LLP was formed by the merger of the two well regarded and long established legal practices of Barlows and Robbins Olivey in 2004. It is now one of the larger law firms in the South East region with a thriving portfolio of private and commercial clients.

We have 24 partners and approximately 220 staff.

From our three Surrey offices in Guildford, Woking and Godalming, which all provide easy access to London as well as Heathrow and Gatwick Airports, we provide a wide range of legal services to clients who are spread across the South East, throughout the UK and overseas.

Barlow Robbins LLP is Lexcel accredited and is recognised as an Investor in People. The firm is a member of the UK200 Group of Chartered Accountants and lawyers as well as a member of Law South, a group of nine prominent law firms in the South.

Our other services

From our conveniently located offices, we can assist clients with every legal aspect of their business and can also provide private client services. Our approach is simple: provide a quality service promptly; provide a depth of experience through a broad range of legal services; encourage mutual trust and respect through open communication and deliver clear and relevant advice to our clients when they need it.

Contacts

Please contact any of the corporate team for more information on the services we provide.

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