



*Rural Women's
Network*

START YOUR OWN BUSINESS

WORK BOOK 6

PRACTICAL & LEGAL CONSIDERATIONS

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BUSINESS STRUCTURE

When you're setting up in business, you'll need to decide on the 'trading form' it will take:

- Sole Trader
- Limited Company
- Partnership
- Franchise, or other form

Sole Trader – You are the business

As a Sole Trader you will have the freedom to choose how to do things. You are your own boss. You are, however, totally responsible and liable for every aspect of the business. If things were to go wrong, your personal possessions as well as your business assets may be at risk.

To start your business as a Sole Trader you need to register with the Inland Revenue (IR) which involves relatively little paperwork compared to forming a Limited Company. Order P/SE/1 booklet from the IR 08459 15 45 15 or www.hmrc.gov.uk

Limited Company – The business is separate from you

In the eyes of the law a Limited company is separate entity from the people running it; consequently you would not normally be liable for its debts. However, you may be asked to give a personal guarantee on certain loans and liabilities. You may also be held personally responsible for company debts if you over-trade.

There are also some tax incentives to becoming a Limited Company.

In order to register as a limited company you will need to agree your constitution and submit this along with other necessary forms to Companies House. A solicitor or accountant will be able to help you form a company. Visit www.companieshouse.gov.uk for more information.

It can cost considerably more to set up as a Limited Company compared to a Sole Trader because of all the paperwork involved.

Partnership – You and your partner(s) are the business

A Partnership is similar to a Sole Trader; however responsibility and liability for running the business will lie with the partners rather than an individual.

The details of duties and responsibilities of partners should be detailed in a 'Partnership Agreement' which should cover what each has put what into the business, what work each agrees to do, how profits will be shared and what would happen if you decided to wind up the partnership.

It is advisable to get this drawn up by a solicitor. You can obtain a free initial consultation with some solicitors or through Lawyers for Your Business (Tel: 020 7405 9075) or <http://www.lawsociety.org.uk/choosingandusing/helpyourbusiness/foryourbusiness.law>

Franchise

A Franchise is not a separate legal structure. It is an agreement between the seller of an idea (the Franchiser) and the person buying the right to use that idea (the franchisee) for example, McDonalds and KFC. More information on franchises and how to go about

doing buying into one is available from www.british-franchise.org.uk. The DTI also produce a guidance leaflet 'Buying a Franchise', see www.dti.gov.uk

See the end of this Workbook for more detail on all of the above business structures.

TASK 1

Visit www.businesslink.gov.uk , click on 'Setting up a business' and then on company structures. This will take you through all the advantages and disadvantages of different structures compared to one another.

Write below which business structure you are most likely to choose to use and why.

BUSINESS NAME

Sole Traders or Partnerships can trade under their own names or choose a different business name (as long as you include your own name and the business address on all business stationery, and you do not pose as another business). Limited Companies or Partnership must register a unique name with Companies House.

You cannot use offensive names, and your proposed company name must not be the same as another name already appearing on the register at Companies House. There are restrictions on the use in a business or company name of a number of 'sensitive' words and expressions - such as 'Royal' or 'Institute'.

When choosing a name, you may want to consider whether you will want to set up a website in the future. If so, it's a good idea to check the name is available as a Web address (domain name) and register it, so your customers will be able to find your website easily. You can check this on www.nic.co.uk or www.lowcostnames.co.uk

When deciding on a name

1. Look at whether the name needs to reflect what your business does
2. Ensure the name gives out the right image of your company
3. Check that the name you've chosen isn't used by someone else (use internet searches, directory searches etc.)
4. Ensure the name doesn't translate badly if you trade abroad
5. Find out whether an Internet domain for that name is available
6. Register your chosen name at Companies House if you are going to be a Limited Company

TASK 2

Research in the Phone Book, Yellow Pages and on the Internet to see if any other organisation has the same name as, or a name similar to, your proposed name. Visit www.nic.co.uk and carry out a domain name search to see if anyone has already registered your business name.

Use the box above to make notes on your findings.

PREMISES AND PLANNING

Working from Home

If you plan to work from home, check to see if there are any clauses in your mortgage or tenancy agreements which may prevent you before you start your business. You will also need to check with your lender or landlord before you start.

Check with your household insurer to make sure you are covered to run a business from home.

You will have health and safety responsibilities and need to consider this for people visiting your premises.

If your home business will have a significant impact on the use of the building or surrounding area, you may need to apply for planning permission. You may also need to pay business rates on the area of your home that you use for your business. Contact your local council for more information.

Premises

You need to ensure that you do not discriminate against disabled people (customers and employees). From 2004 the law requires you to make reasonable adjustments to any physical barriers that make access to premises difficult for disabled people. Visit the Disability Rights Commission for more information www.drc-gb.org.

If you are looking for premises you should contact your local economic development unit at your district council. They often keep a register of commercial property available for purchase or lease.

TASK 3

Is there anything you need to do in terms of premises? If yes, write some actions and then follow them up.

TRADING STANDARDS & ENVIRONMENTAL HEALTH

Trading standards have leaflets on the following: Animal health and welfare; consumer/buyers rights (including selling methods); Fair trading (including pricing; Food; Safety; Weights and measures; packaging; Business Names; and so on.

TASK

Visit the Trading Standards web site and see if there are any leaflets that apply to you. www.tradingstandards.gov.uk

Use the space below to take any notes relevant to your business.

Environmental Health

If your business involves food, chemicals or anything else that may have a negative effect on the environment if not managed properly, you should contact your local council and make an appointment to see an Environmental Health Officer.

REGISTRATION WITH THE INLAND REVENUE (HMRC)

When you start working for yourself, you must register with the Inland Revenue as self-employed, even if you already send in a tax return.

How you register

Order the 'Thinking of working for yourself?' booklet (quote P/SE/1) or call the help line for the Newly Self-Employed Tel: 08459 15 45 15 or visit www.hmrc.gov.uk

The Inland Revenue have also produced an excellent starter pack called 'Cutting through the red tape'. This is relatively jargon free and explains all you need to know about the Inland Revenue.

You can even receive a free visit from an Inland Revenue Advisor who will take you through all the requirements of the Inland Revenue. (Remember; Advisors are there to tell you how to complete necessary forms and keep records – not on how to minimise your tax bill.) To arrange an appointment contact your local IR office. They also run a series of excellent workshops - for further information call 0151 2428380.

BOOK KEEPING

You will need to develop a book-keeping system for your business. This requires you to keep information on:

- Sales invoices to your customers
- Purchase invoices from your suppliers
- Keeping track of petty cash you spend in your day-to-day trading activities
- All your tax returns
- Any equipment or funds introduced
- The amount and source of any funds introduced privately e.g. building society account
- VAT forms (if you are registered)
- Your bank statements

How you record your income and expenditure will depend on what you sell and buy. It is important to seek advice when setting up your book keeping systems as you could save hundreds of pounds on your accountancy bill and hours of analysis time if systems are set up correctly in the first place.

You can use software packages such as SAGE or Quick Books, build your own excel spreadsheets or use paper books. As a general rule, the more complex accounting information you need, the greater the need for specially designed software. If you just want to collect information on how much you have spent and how much you have sold each month, then paper books will be enough.

DEALING WITH TAX

Income Tax and National Insurance

When you are an employee your tax and Class 1 national insurance is deducted at source. However, when you are self-employed you do not pay tax until you can see how much money you have earned (income less expenses) during your year of trading.

You are required to pay Class 2 National Insurance contributions when self-employed. This costs approximately £2 per week. For more information contact your local Contributions Agency. You are also required to pay Class 4 National Insurance contributions if your taxable profits are above a certain threshold - this changes with the budget so check the HMRC web site for up to date figures www.hmrc.gov.uk

VAT

You will need to register for VAT if your turnover reaches the registration threshold - again check on www.hmrc.gov.uk for the current threshold figure. Make sure you monitor your turnover monthly – you are required to register as soon as you reach the threshold. It is possible to voluntarily register if your income is under this figure. This may be advantageous to you if you are spending a lot of money on set-up costs which attract

VAT or if your business is within certain sectors. You will need to speak to an accountant for more specific advice on this subject in relation to your business.

EMPLOYING THE SERVICES OF OTHERS

You must be careful to ensure that, when engaging people to work for you, you correctly assess whether they can be classed as self-employed or should actually be taken on as employees. You may be liable for any tax or national insurance which a person should have paid if they are defined as an employee and you have been paying them on a self-employed basis. The general rule is that if someone is only working for you then they are usually classed as an employee. More information is available from the HMRC web site www.hmrc.gov.uk.

PERSONAL INSURANCE

Life Insurance

Life insurance will ensure that if anything happens to you, your family will be left with a sum of money.

Accident / loss of income Insurance

Accident Insurance can cover you if you are unable to work because of an accident or injury and Loss of Income does the same in the case of illness. For some sole traders this cover is essential, especially if income from the business is dependent on them.

BUSINESS INSURANCE

Product Liability Insurance

If you sell anything physical then you will probably need product liability insurance. This is to cover you if anyone should harm themselves as a result of your product.

Professional Indemnity Insurance

If you sell a service or some form of professional knowledge then you should probably have professional indemnity insurance. This can cover you in the event that you give poor advice.

Public Liability Insurance

If you come into contact in any way with the general public you should have public liability insurance. This can protect you if a member of the public comes to any harm as a result of your business. For example, your stall at a craft fair may fall on someone, someone may trip over your mop and bucket, etc.

Employers Liability

If you intend to employ someone then you are required by law to take out Employers' Liability Insurance. This is to protect you and your employees.

TASK

Contact a couple of your local insurance brokers (they often have access to a range of insurance companies) and discuss your business insurance requirements. If possible ask them to provide an actual quotation. For an on-line quote visit www.insurance2day.co.uk

PROTECTING INTELLECTUAL PROPERTY

It is best to get legal advice at an early stage on all of the areas listed below. Business Link Cumbria offer specialist advice and grant support on some of these areas. Visit www.businesslinkcumbria.co.uk or call them on 0870 7571177.

Business name

As a sole trader you can choose any name (with certain exclusions) as long as you are not 'passing off' as another business. This also applies to domain names.

Protecting your trade marks

Trade marks help customers identify your business and can be associated with developing a brand. To prevent others from using your trade mark you can register with the Patent Office.

1. Obtain a free Trade Mark information pack with information on how to protect your ideas. www.patent.gov.uk or tel: 0845 9500 505.
2. Check your trademark does not infringe any existing rights. www.patent.gov.uk
3. Visit www.intellectual-property.gov.uk for further information on trade marks
4. You can seek further information from the Institute of Trade Mark Attorneys www.itma.org.uk or tel: 020 8686 2052.

Patent to protect your Invention

Patents are used to protect the technical aspects of products and processes and prevent others from making, selling, or importing the product/process you have developed. This may be a new product or process or an improvement on an existing one.

1. Obtain a free information pack on protecting your ideas. www.patent.gov.uk or Tel 0845 9500 505.
2. Check your product/process does not infringe any existing rights. www.patent.gov.uk
3. Visit www.intellectual-property.gov.uk for further information on patents
4. You can seek further information from the Institute of The Chartered Institute of Patent Agents www.cipa.org.uk or Tel: 020 7405 9450.

Understanding Copyright

Copyright gives rights to the creators of original, literary, published editions of works and such like. The owner of copyright is generally the first creator.

Unless you have a contract/agreement to state otherwise, photographers, web creators, graphic designers etc. retain the copyright on their work.

More information is available from www.patent.gov.uk

Registered design and design right

You can protect the shape and configuration (not ornamentation) of a design. You can apply to the patent office to register a design for 5 years up to a maximum of 25 years.

More information is available from www.patent.gov.uk

FINALLY

This work book is a general summary of practical and legal considerations. For more information on issues that relate more directly to your business, please contact the organisations suggested or your own Solicitor / HMRC Business Support Team contact / Insurance Broker etc.

BUSINESS STRUCTURES

SOLE TRADER

Becoming a sole trader is the most straightforward way to set up in business.

Setting up in business as a sole trader is relatively quick and easy and involves little of the form-filling associated with starting and running a limited company. As a sole trader you will make your own business decisions and won't have to answer to anyone else.

You are personally responsible for any losses the business makes.

In most cases sole traders are taxed as self-employed. This requires you to register with the Inland Revenue within three months of starting up.

Pros of operating as a sole trader

- You are entitled to all the profits that are made by the business.
- You are in complete control of the business.
- There is little bureaucracy involved so changes can be made quickly.
- You have less paperwork to deal with regarding legislation and tax.

Cons of operating as a sole trader

- Can become isolated as there is no one to share the running of the business with.
- You will probably have to work long hours and it will be difficult to take time off.
- You are solely responsible for any losses the business incurs, i.e. you have unlimited liability. There is no distinction between personal and business assets, so you are potentially putting your home and personal possessions at risk if you are unable to repay your debts.

LIMITED COMPANY

A limited company may offer reduced responsibility for business debts; however administration and legal responsibilities are greater.

Private companies limited by shares generally protect the individual from personal responsibility for business debts. Your personal risk will be restricted to how much you invest in the business and any financial guarantees you have given in order to obtain financing.

However, you can still be personally accountable for company debt if the company fails and you have not carried out your duties as a company director.

Administrative requirements include: submission of annual accounts to Inland Revenue and Companies House; information on directors; memorandum of association and articles of association; and if your turnover is over £1million accounts will also need to be audited.

Company formation agents are often used for new companies - visit the RWN Business Directory for details of agents in the area.

Limited companies pay corporation tax on their profits, while you will be taxed like an employee of the company in the same way as anyone else who works for you.

Pros of forming a limited company

- Limited liability of the owners of the business
- Ability to raise finance by selling shares in the business
- Employees are able to own a share in the business
- Suppliers are sometimes more willing to deal with a limited company
- Can continue to trade if one of the members leaves
- The company name is protected

Cons of forming a limited company

- A wide range of complex and detailed legislation must be complied with, which is not applicable to sole traders and partnerships
- Compulsory disclosure of company

More information from www.companieshouse.gov.uk

PARTNERSHIP

A partnership involves two or more people setting up in business together, sharing profits and risks.

Partners share personal responsibility for business debts, so if one partner can't pay their share of any debts, the other partners become responsible for it.

It is advisable to draw some form of partnership agreement about how decisions will be made and how the business will be run.

Partners are also often taxed as self-employed. This requires you to register with the Inland Revenue within three months of starting up.

Pros of forming a partnership

- Partner can provide Increased capital available for investment
- Shared management responsibilities
- Shared risks and losses
- Partners can bring a variety of different skills and experience to the business
- They are easy to set up as they are not incorporated or registered
- Partnerships cannot be taken over by other businesses

Cons of forming a partnership

- There is unlimited liability and each partner is personally responsible for the debts of the partnership
- Problems can occur when there are disagreements between partners
- An individual can make a business decision without informing the other partners
- Partnerships must be dissolved on death, resignation or bankruptcy of a partner

LIMITED LIABILITY PARTNERSHIP

A limited liability partnership or LLP shares many of the features of a normal partnership - but it also offers reduced personal responsibility for business debts.

Members of a limited liability partnership (LLP) are protected from personal responsibility for business debts. As with a traditional partnership, you share management responsibilities and potentially have more money to invest in the business.

Pros of forming a limited liability partnership

- Retains the flexibility of a partnership as opposed to the well-defined structure of a limited company
- LLPs do not have to be dissolved on the resignation, death or bankruptcy of a member
- There is limited personal liability for members
- Tax and National Insurance contributions are lower than for a limited company
- Increased capital available for investment
- Shared management responsibilities
- Shared risks and losses
- Members can bring a variety of different skills and experience to the business
- Limited liability partnerships cannot be taken over by other businesses

Cons of forming a limited liability partnership

- Formation is more complex and costly than that of a partnership
- Most limited liability partnerships need to produce audited accounts
- More administration overheads, e.g. informing Companies House of changes to members and designated members
- Problems can occur when there are disagreements with other members